Tennessee Code Annotated

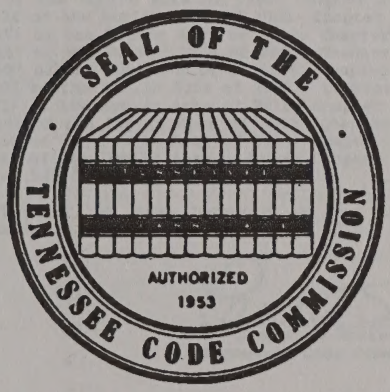
Volume 10B

2018 Replacement

Updated through the 2018 Session of the General Assembly

THE OFFICIAL TENNESSEE CODE

Prepared Under the Supervision of the
Tennessee Code Commission



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The Honorable Herbert Slatery, III
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CERTIFICATE OF TENNESSEE CODE COMMISSION

I, Paige A. Seals, Executive Secretary of the Tennessee Code Commission, acting by authority of the Commission and pursuant to Tennessee Code Annotated, Section 1-1-110, hereby certify that the Tennessee Code Commission has approved the manuscript of the Tennessee Code as contained in this Replacement Volume 10B; that the text of each section of the statutes of Tennessee printed or appearing in this Replacement Volume has been compared with the original section appearing in the published copies of the Public Acts; and, with the exception of changes permitted by Tennessee Code Annotated, Section 1-1-108, and with the exception of changes made necessary due to repeal by implication, express repeal and amendments by implication, the Code sections appearing in this Replacement Volume as codification of the Public Acts of 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017 are true and correct copies of such sections as codified by Chapter 6 of the Public Acts of 1955; Chapter 1 of the Public Acts of 1957, of the Public Acts of 1959, of the Public Acts of 1961, of the Public Acts of 1963, of the Public Acts of 1965, of the Public Acts of 1967, of the Public Acts of 1969; Chapter 354 of the Public Acts of 1970; Chapter 1 of the Public Acts of 1971; Chapter 441 of the Public Acts of 1972; Chapter 1 of the Public Acts of 1973; Chapter 414 of the Public Acts of 1974; Chapter 1 of the Public Acts of 1975; Chapter 382 of the Public Acts of 1976; Chapter 1 of the Public Acts of 1977; Chapter 496 of the Public Acts of 1978; Chapter 1 of the Public Acts of 1979; Chapter 444 of the Public Acts of 1980; Chapter 1 of the Public Acts of 1981; Chapter 543 of the Public Acts of 1982; Chapter 1 of the Public Acts of 1983; Chapter 483 of the Public Acts of 1984; Chapter 2 of the Public Acts of 1985; Chapter 523 of the Public Acts of 1986; Chapter 786 of the Public Acts of 1986; Chapter 4 of the Public Acts of 1987; Chapter 458 of the Public Acts of 1988; Chapter 5 of the Public Acts of 1989; Chapter 668 of the Public Acts of 1990; Chapter 28 of the Public Acts of 1991; Chapter 528 of the Public Acts of 1992; Chapter 1 of the Public Acts of 1993; Chapter 543 of the Public Acts of 1994; Chapter 1 of the Public Acts of 1995; Chapter 554 of the Public Acts of 1996; Chapter 1 of the Public Acts of 1997; Chapter 574 of the Public Acts of 1998; Chapter 235 of the Public Acts of 1999; Chapter 574 of the Public Acts of 2000; Chapter 52 of the Public Acts of 2001; Chapter 491 of the Public Acts of 2002; Chapter 1 of the Public Acts of 2003; Chapter 437 of the Public Acts of 2004; Chapter 1 of the Public Acts of 2005; Chapter 507 of the Public Acts of 2006; Chapter 1 of the Public Acts of 2007; Chapter 607 of the Public Acts of 2008; Chapter 2 of the Public Acts of 2009; Chapter 624 of the Public Acts of 2010; Chapter 41 of the Public Acts of 2011; Chapter 582 of the Public Acts of 2012; Chapter 1 of the Public Acts of 2013; Chapter 530 of the Public Acts of 2014; Chapter 27 of the Public Acts of 2015; Chapter 569 of the Public Acts of 2016; Chapter 30 of the Public Acts of 2017; and Chapter 536 of the Public Acts of 2018.

IN WITNESS WHEREOF, we have hereunto set our hand and seal of the Tennessee Code Commission, this 10th day of July, 2018.

Paige A Seals
Executive Secretary
Tennessee Code Commission

STATE OF TENNESSEE
DEPARTMENT OF STATE

I, Tre Hargett, Secretary of State of the State of Tennessee, do hereby certify that true and correct copies of the following acts, Chapter 6 of the Public Acts of the 79th General Assembly; and Chapter 1 of the Public Acts of the 80th General Assembly, of the 81st General Assembly, of the 82nd General Assembly, of the 83rd General Assembly, of the 84th General Assembly, and of the 85th General Assembly; that Chapters 1 and 354 of the 86th General Assembly; Chapters 1 and 441 of the 87th General Assembly; Chapters 1 and 414 of the 88th General Assembly; Chapters 1 and 382 of the 89th General Assembly; Chapters 1 and 496 of the 90th General Assembly; Chapters 1 and 444 of the 91st General Assembly; Chapters 1 and 543 of the 92nd General Assembly; Chapters 1 and 483 of the 93rd General Assembly; Chapters 2, 523, and 786 of the 94th General Assembly; Chapters 4 and 458 of the 95th General Assembly; Chapters 5 and 668 of the 96th General Assembly; Chapters 28 and 528 of the 97th General Assembly; Chapters 1 and 543 of the 98th General Assembly; Chapters 1 and 554 of the 99th General Assembly; Chapters 1 and 574 of the 100th General Assembly; Chapters 235 and 574 of the 101st General Assembly; Chapters 52 and 491 of the 102nd General Assembly; Chapters 1 and 437 of the 103rd General Assembly; Chapters 1 and 507 of the 104th General Assembly; Chapters 1 and 607 of the 105th General Assembly; Chapters 2 and 624 of the 106th General Assembly; Chapters 41 and 582 of the 107th General Assembly; Chapters 1 and 530 of the 108th General Assembly; Chapters 27 and 569 of the 109th General Assembly; and that Chapters 30 and 536 of the 110th General Assembly of the State of Tennessee, the originals of which are on file in the Office of the Secretary of State, were transmitted to the Tennessee Code Commission for publication in this Replacement Volume 10B.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the Great Seal of the State of Tennessee, at Nashville, on the 10th day of July, 2018.

Tre Hargett
Secretary of State

Preface

This Replacement Volume 10B of the official Tennessee Code supersedes the similar scope of its material in its former 2013 Volume 10B predecessor, and was made necessary by new and amendatory legislation. This volume was prepared by the editorial staff of the publisher with the assistance of Paige A. Seals, Revisor of Statutes and Executive Secretary for the Tennessee Code Commission.

This volume contains Titles 57, Intoxicating Liquors; 58, Military Affairs, Emergencies and Civil Defense; 59, Mines and Mining; 60, Oil and Gas; and 61, Partnerships.

Notes in this volume are to the following sources:

South Western Reporter, 3d Series
Supreme Court Reporter
Federal Reporter, 3d Series
Federal Supplement
Federal Rules Decisions
Bankruptcy Reporter
Opinions of the Attorney General
Tennessee Bar Journal
Tennessee Law Review
University of Memphis Law Review
Vanderbilt Law Review

Suggestions, comments, or questions about the Tennessee Code Annotated are always welcome. You may call us toll free at (800) 833-9844, email us at customer.support@lexisnexis.com, or write Tennessee Editor, LexisNexis, 701 E. Water St., Charlottesville, Virginia 22902.

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September 2018 LexisNexis

User's Guide

This guide is designed to help you get the most out of your Tennessee Code Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

—Advance Code Service
—Advance Legislative Service
—Amendments
—Analyses
—Attorney General Opinions
—Code Status
—Compiler's Notes and Code Commission Notes
—Cross References
—Court Rules
—Disciplinary Board Opinions
—Effective Dates
—Historical Citation
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—Notes to Decisions
—Numbering System
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—Parallel Reference Tables
—Repealed Statutes
—Replaced Volumes
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—Tables of Contents
—Tables Volume
—Textbooks
—Unconstitutional Statutes

If you have a question not addressed by the User's Guide, or comments about your Code service, please call our toll-free number (1-800-446-3410), fax (800) 643-1280, or write to: Tennessee Code Editor, LexisNexis, 701 E. Water St., Charlottesville, Virginia 22902.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish Tennessee Advance Code Service pamphlets. The Advance Code Service keeps your Code as up-to-date as possible by providing notes to cases, opinions of the Attorney General, and law reviews received after the cutoff for inclusion in the preceding Supplement, as

well as other pertinent information. Advance Code Service pamphlets are cumulative, so that you need retain only the latest pamphlet to have all the updated material published since the preceding Supplement.

ADVANCE LEGISLATIVE SERVICE

Advance Legislative Service pamphlets contain photoreproductions of Tennessee legislation. They are sent to all subscribers, as part of the annual supplement service, within weeks of an act's passage. Pamphlets also contain a table of contents, a table of Code sections affected by new laws, informative notations in the margins of acts, and an index. All these aids help you assess the impact of new legislation between the time it first becomes available and publication of the Code supplement.

AMENDMENTS

Amendment notes describe exactly what changes the legislature has made in the statute and are written so that you can reconstruct the language of the statute as it existed prior to amendment. These notes appear only in the annual pocket part supplements following each section which has been amended within the past two years. Where an amendment note states that certain provisions have been rewritten, and the former version is not set out in the note, the presumption is that the former version may be found in the bound volume.

ANALYSES

In addition to the table of contents appearing at the beginning of each bound volume, each title and chapter appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title or chapter and enables you to see at a glance the content of the title or chapter without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Citations to Opinions of the Attorney General and Reporter of Tennessee are carried in supplement pamphlets, beginning with opinions issued in 1983. Although these opinions are advisory only, they are well-researched opinions of law and contain useful discussions of Tennessee statutes. Citations to opinions which concern the constitutionality of provisions, or which the Code Commission wishes to retain for other reasons, will appear in Code Commission Notes in replacement volumes.

CODE STATUS

Tennessee Code Annotated is the official Code of Tennessee. It was adopted in 1955. Code supplements and replacement volumes are also enacted into law following their publication, in order to assure the integrity and official character of all Code text. The Code is prepared under the auspices of the Tennessee Code Commission and with the assistance of its staff. For the authority of the Commission and other statutes relating to the Code, see title 1 of the Code.

COMPILER'S NOTES AND CODE COMMISSION NOTES

If nothing else, compiler's notes and code commission notes should always be read because they point out important information or special circumstances concerning a statute.

Code commission notes are prepared under the direct supervision of the Tennessee Code Commission to convey information that is not apparent on the face of a Code section.

Repealed statutes have compiler's notes citing the legislative history of the repealed section, the chapter and section of the public act responsible for the repeal, and a reference to new statutory provisions, if any, which replace the repealed statute. Transferred, superseded, obsolete and unconstitutional statutes have similar notes.

CROSS REFERENCES

Cross references refer you to other statutes which may affect a law or place it in context. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

COURT RULES

A softcover Court Rules Annotated two-volume set is included in your Code set. These volumes are supplemented once each year in November and are replaced annually. Rules of the Supreme Court, the Board of Judicial Conduct, the Court of Appeals, and the Court of Criminal Appeals, rules of appellate, civil, criminal and juvenile procedure and rules of evidence, as well as local rules of practice and procedure in the courts of certain counties are included, along with appropriate annotations and indexes. Rules are printed essentially in the form in which they have been promulgated, with only minor editing for stylistic consistency.

Advisory Commission Comments which have been added after the original comments have, in brackets following each additional paragraph of comment, the date the paragraph was added.

DISCIPLINARY BOARD OPINIONS

Notes under this heading appear in Volume 2 of the Court Rules and its supplement, and refer you to opinions of the Board of Professional Responsibility of the Supreme Court of Tennessee.

EFFECTIVE DATES

Effective date notes appear only in the pocket part supplements to the bound volumes. These notes show the effective date for enactments and amendments made during the past two years. An effective date note will appear under each section enacted or amended, except where an entire chapter or part has been enacted, in which case the note will appear only under the first and last sections of the chapter or part.

Where repeals and enactments are postponed, bracketed dates in the boldfaced catchline and explanatory information in the compiler's notes enable you to ascertain the valid law both before and after the postponed effective date. In the case of postponed amendments, the current law will be set out

followed by a separate postponed version in italics font, both with bracketed dates in the catchlines.

HISTORICAL CITATION

The historical citation appears in brackets immediately following the text of the statute. The historical citation includes the year, chapter and section of all public acts enacting or amending the statute. By finding these public acts in the session laws, you can trace the history of a section from its original enactment to its present form.

The historical citation also includes references to the sections of former codes in which the statute was previously compiled (as in "Code 1932, § 325" cited in the historical citation to § 4-3-1803). Amendments to the statute which have been implied by subsequent legislation rather than specifically mandated are indicated by "impl. am." followed by the public act chapter and section number. Statutes which have been transferred from former section numbers within this Code cite the former section number in the historical citation. For instance, in the historical citation for § 4-3-203, "T.C.A. (orig. ed.), § 4-308" indicates that § 4-3-203 was transferred from § 4-308 which appeared in the original edition of the 1955 Code. In the historical citation for § 4-3-1009, "T.C.A., § 4-328" indicates that § 4-3-1009 was transferred from § 4-328 which appeared in either a replacement volume or a pocket part supplement to the original edition of the 1955 Code.

When used in conjunction with the Tables Volume (see *Tables below), the historical citation can be an invaluable aid in legal research.*

In the Court Rules volume, court rules carry historical citations showing the date of any amendment to a rule. The date a set of rules was originally promulgated appears beneath the heading to the set.

INDEXES

The General Index volumes are updated and replaced annually. In addition, at the back of each bound volume in the set, there is a volume index which indexes all the material contained in that particular volume.

Also included with the index volumes are the following items of interest: a Title and Chapter Index, which is a short index for use by those familiar with terminology used in the T.C.A.; POPULAR NAMES OF ACTS main heading; SHORT TITLES main heading; and the Index to Uncodified Public Chapters.

As accurate and thorough as these indexes are, there is no such thing as an index that is affordable, convenient, *and* perfect. Your best defense against index wild goose chases is familiarity with indexing techniques. To that end, a list of Suggestions for Fast, Effective Use of the Index has been included on the inside front cover of each index volume, and a more detailed treatment is given in the Foreword to the Index.

At the end of every supplement pamphlet (except for volumes 1 and 13, and the Index and Court Rules volumes), a table entitled "Code Sections in This Pamphlet" lists every Code section within the scope of the volume that has been added, amended, repealed, transferred, superseded, rendered obsolete, or deemed unconstitutional since the bound volume was published. This is a convenient index to the supplement pamphlet, and gives you one place to check to see if there have been any changes in statutes that interest you.

LAW REVIEWS

Articles from the Tennessee law school law reviews and other professional journals are cited under each statute referred to in the article.

NOTES TO DECISIONS

All state and federal cases which construe or apply Tennessee law or the Tennessee or U.S. Constitutions have been annotated and are cited under the pertinent statutes. Where a decision has been reviewed by a higher court, the subsequent judicial history and disposition is noted in the case citation if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist you in locating pertinent notes. The catchlines are arranged in logical order. Where there are two or more catchlines, an "analysis" listing all the catchlines precedes the annotations.

Where a statute has been amended or repealed and replaced with similar subject matter, case notes construing or applying the former statute are frequently retained under "Notes to Decisions."

Where a group of case notes applies to more than one statute in the same volume, the case notes are usually cited under the most appropriate statute; a cross-reference is inserted under the "Notes to Decisions" of the related statutes, under the appropriate catchline, referring you to the section carrying the pertinent case notes.

NUMBERING SYSTEM

A new numbering system has been implemented by the Code Commission which facilitates the organization of sections. This system divides existing chapters into "parts" so that several related, but distinct, subjects can be compiled in one chapter. The new numbering system consists of three-tier numbers rather than the former two-tier numbers. Thus, former chapter 29 of title 4 (former §§ 4-2901 — 4-2926) was redesignated in 1979 and organized into two parts, §§ 4-29-101 — 4-29-120 and 4-29-201 — 4-29-207. The number in the first tier represents the title; the second tier represents the chapter; and the last tier represents the part and section.

4	-	29	-	1	10
Title		Chap.		Part	Section

For example, § 4-29-110 is the tenth section in the first part of chapter 29 of title 4. Section 4-29-203 is the third section in the second part of chapter 29 of title 4.

Where former two-tier section numbers have been transformed into this three-tier system, a parallel reference table is provided showing the disposition of the former sections. Furthermore, the former two-tier section number appears in the history line of each section transformed to the three-tier system.

Code sections are divided into subsections. A subsection may be further divided into subdivisions. The first level of a section is a subsection, and all subsequent divisions of that subsection are referred to as subdivisions. A subsection is designated by a lower case letter in parenthesis. If a section has only one subsection, the lower case designation does not appear, even if that subsection is subdivided; any subsequent division of that single subsection is designated and referred to by the appropriate subdivision designation. The designations are as follows:

First level (subsections): (a), (b), (c), etc.
Second level (subdivisions): (1), (2), (3), etc.
Third level (subdivisions): (A), (B), (C), etc.
Fourth level (subdivisions): (i), (ii), (iii), etc.
Fifth through eighth levels (subdivisions) repeat the above designations but italicize the designations:
(a), *(b)*, *(c)*, etc.
(1), *(2)*, *(3)*, etc.

For example, if § 1-1-101 is divided into two paragraphs designated as (a) and (b), those designated paragraphs are referred to as subsections, subsection (a) and subsection (b). If either subsection is further divided, those further divided levels of the subsection are subdivisions.

Therefore, if subsection (a) is divided into three additional levels: (a)(1), (a)(2), and (a)(3), those levels within subsection (a) are referred to as subdivisions: subdivision (a)(1), subdivision (a)(2), and subdivision (a)(3). Any subsequent further division of a subdivision is simply another subdivision. If subdivision (a)(1) is divided into three additional levels, (a)(1)(A), (a)(1)(B), and (a)(1)(C), those levels are also called subdivisions, as are the levels if subdivision (C) is further divided into additional levels, which would be subdivisions (i), (ii), (iii), etc. Example citation: § 1-1-101(a)(1)(A)(i).

OBSOLETE STATUTES

Where the Tennessee Code Commission has determined that, in light of more recent legislation or court decisions, a statute is no longer valid, the statute has been omitted with an indication that it is "Obsolete."

PARALLEL REFERENCE TABLES

Certain titles, chapters and groups of sections which have been repealed in their entirety and replaced with similar provisions or which have been transferred to new section numbers are accompanied by a parallel reference table which refers you from the former section number to the section number of the present provisions. These tables generally appear at the front of the bound volume or preceding the title or chapter in the supplement.

REPEALED STATUTES

Statutes which have been repealed are so indicated in brackets following the section number. Compiler's notes containing the historical citation of the former statute, the legislation responsible for the repeal, and present statutory provisions concerning the same subject matter (if any) appear after each

repealed section or after the first section of a repealed chapter. References to repealed statutes are ordinarily dropped upon volume revision.

REPLACED VOLUMES

The Code is regularly updated and streamlined by the replacement of volumes. Although a current set of the Tennessee Code Annotated contains the currently applicable statutes, users are encouraged to retain replaced volumes and their supplements for historical reference.

SECTION HEADINGS

According to § 1-3-109, section headings or "catchlines" are not to be construed as part of the law. The Code Commission has authority, under § 1-1-108(a), to "change the wording of and prepare new section headings and symbols." Working together, the Code Commission and the publisher continuously review catchlines to ensure that they give all necessary information as briefly and accurately as possible. Generally, T.C.A. catchlines give no more information than is necessary to distinguish one section from others you might consult. Thus, the catchline for § 1-3-109 reads "Section headings and histories," not "Section headings and histories not part of law"; the longer form would be used only if the chapter had another section that focused on headings and histories from a different angle. In addition, T.C.A. catchlines often use popular terminology in an attempt to shed light on a section's meaning and save you valuable research time, even though the popular term appears nowhere in the section and may be less accurate than its technical equivalent.

The Code Commission and the publisher invite your suggestions on ways to improve particular catchlines.

SENTENCING COMMISSION COMMENTS

These comments, contained under sections of the criminal laws amended by chapter 591 of the Public Acts of 1989, were written to the text of the sections of chapter 591, as codified herein. These comments have not been revised to reflect amendments to these sections after 1989. They have been retained to provide guidance on the original intent of those sections which may not be affected by later amendments.

SUPERSEDED STATUTES

A statute which has been superseded by the enactment of subsequent legislation is omitted and indicated as "Superseded" in brackets following the section number. A compiler's note containing information concerning the superseding provisions accompanies a superseded statute.

TABLES OF CONTENTS

Each bound volume carries a table of contents listing titles, chapters, and parts. In addition, a complete table of T.C.A. titles is updated and published annually in the supplement pamphlet for Volume 1. This table, which follows the Preface and precedes the User's Guide, helps you find the T.C.A. volume you need, and also helps you keep track of titles that have been relocated due to volume replacement.

TABLES VOLUME

The Tables Volume (Volume 13) of the Tennessee Code Annotated is one of the most helpful tools in legal research.

Included in the Tables Volume are parallel tables referring the user from section numbers in former codes to section numbers in the original 1955 Tennessee Code Annotated. Also in Volume 13 is a table of former and current section numbers for Code sections whose numbers have changed since 1955. This table provides a reference to Code sections renumbered in the conversion from the former two-tier numbering system to the new three-tier system.

Disposition tables list each chapter and section of all the Tennessee public acts passed by the legislature and indicate where each has been compiled in the present Tennessee Code Annotated. Public act sections which were repealed prior to the publication of the original Tennessee Code Annotated in 1955 have been omitted in order to reduce the size of the Tables Volume; however, sections repealed after 1953 are indicated as repealed with a citation to the public act chapter and section responsible for the repeal. Public act sections which have not been compiled are indicated with notations such as "special," "temporary," "repealing," "effective date," "separability," "emergency," "legislative intent," "unconstitutional," etc.

The disposition tables and the historical citations following the statutes work in tandem (see *Historical Citations*, above). In order to determine where a particular public act chapter or section has been compiled, refer to the disposition tables. For instance, the tables show that Public Act 1965, ch. 181, § 7 has been compiled in § 11-9-107. The historical citation following § 11-9-107 indicates that it was enacted by Public Acts 1965, ch. 181, § 7 and that it has not been amended. The object is to help you find your way from the public acts to the compiled section, or from the section to the public acts.

Other helpful information is contained in the Table volumes or its current supplement, including mortality tables, annuity valuation tables, a table of county populations based on the federal decennial census, and a table showing the incorporation date, population, and basic charter of Tennessee municipalities.

TEXTBOOKS

Citations to some of the standard Tennessee treatises have been included where they refer to Tennessee statutes.

UNCONSTITUTIONAL STATUTES

Statutes determined to be unconstitutional are omitted and indicated as "Unconstitutional" in brackets following the section number. A compiler's note giving the court decisional authority accompanies such section.

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CHAPTER 1

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PART 1

COMMISSION CREATION, MEMBERSHIP, AND EMPLOYEES

57-1-101. "Commission" defined.

Whenever the word "commission" appears in the context of this chapter, the same means and refers to the alcoholic beverage commission.

History.
Acts 1963, ch. 257, § 11; T.C.A., § 57-819.

Law Reviews.
Selected Tennessee Legislation of 1986, 54 Tenn. L. Rev. 457 (1987).

57-1-102. Alcoholic beverage commission created — Appointment.

(a) There is hereby created and established the alcoholic beverage commission, which shall consist of three (3) members, to be appointed by the governor. One (1) member of the commission shall be appointed and reside in each grand division of the state. The members comprising the commission shall not be less than thirty (30) years of age, and shall have been residents and citizens of this state for at least five (5) years preceding their appointment. In making appointments to the commission, the governor shall strive to ensure that at least one (1) person serving on the commission is sixty (60) years of age or older and that at least one (1) person serving on the commission is a member of a racial minority.

(b)(1) Notwithstanding § 3-6-304 or any other law to the contrary, and in addition to all other requirements for membership on the commission:

(A) Any person registered as a lobbyist pursuant to the registration requirements of title 3, chapter 6, who is subsequently appointed or otherwise named as a member of the commission shall terminate all employment and business association as a lobbyist with any entity whose business endeavors or professional activities are regulated by the commission, prior to serving as a member of the commission. This subdivision (b)(1)(A) shall apply to all persons appointed or otherwise named to the commission after July 1, 2010;

(B) No person who is a member of the commission shall be permitted to register or otherwise serve as a lobbyist pursuant to title 3, chapter 6, for any entity whose business endeavors or professional activities are regulated by the commission during such person's period of service as a member of the commission. This subdivision (b)(1)(B) applies to all persons appointed or otherwise named to the commission after July 1, 2010, and to all persons serving on the commission on such date who are not registered as lobbyists; and

(C) No person who serves as a member of the commission shall be employed as a lobbyist by any entity whose business endeavors or professional activities are regulated by the commission for one (1) year following the date such person's service on the commission ends. This

subdivision (b)(1)(C) applies to members serving on the commission as of July 1, 2010, and to all members appointed to the commission subsequent to such date.

(2) A person who violates this subsection (b) shall be subject to the penalties prescribed in title 3, chapter 6.

(3) The bureau of ethics and campaign finance is authorized to promulgate rules and regulations to effectuate the purposes of this subsection (b). All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and in accordance with the procedure for initiating and proposing rules by the ethics commission to the bureau of ethics and campaign finance as prescribed in § 4-55-103.

History.

Acts 1963, ch. 257, § 1; T.C.A., § 57-801; Acts 1987, ch. 70, § 1; 1988, ch. 1013, § 25; 2010, ch. 1118, § 3.

Compiler's Notes.

The alcoholic beverage commission created by this section, terminates June 30, 2021. See §§ 4-29-112, 4-29-242.

Cross-References.

Grand divisions, title 4, ch. 1, part 2.

57-1-103. Terms — Vacancy — Removal — Compensation — Attendance.

(a) The three (3) members of the commission appointed by the governor must be appointed for terms concurrent with the term of the governor. In the event a vacancy occurs, the governor shall appoint a person to fill the vacancy for the unexpired term.

(b) The commissioners serve at the pleasure of the governor and are subject to removal by the governor at any time.

(c) Each member of the commission must receive five hundred dollars ($500) for each meeting of the commission that the member attends. The members of the commission must likewise be reimbursed for their actual and necessary expenses incurred in connection with their official duties. All reimbursement for travel expenses must be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d)(1) A member of the commission who misses more than fifty percent (50%) of the scheduled meetings in a calendar year must be removed as a member of the commission.

(2) The chair of the commission shall promptly notify the governor of any member who fails to satisfy the attendance requirement as prescribed in subdivision (d)(1).

History.

Acts 1963, ch. 257, § 2; 1976, ch. 806, § 1(12); T.C.A., § 57-802; Acts 1988, ch. 867, § 1; 2018, ch. 933, § 6.

Amendments.

The 2018 amendment, in (a) in the first sentence, substituted "appointed by the governor must" for "shall" and inserted "the" preceding "governor" at the end, substituted "a person" for "some person" in the second sentence; rewrote (b) which read: "The governor shall have authority to remove any member from the commission only for cause, including misfeasance and nonfeasance, after first delivering to the member a copy of the charges against the member."; in (c), rewrote the first sentence which read: "The members of the commission

shall receive annual compensation in the sum of six thousand dollars ($6,000) per year, which shall be payable in monthly installments out of the treasury of the state of Tennessee.", in the second sentence, deleted "The members" at the beginning, and added "that the member attends" at the end, in the third sentence, added "The members of the commission must" at the beginning, deleted "shall" preceding "likewise" and substituted "must" for "shall"; and added (d).

Effective Dates.

Acts 2018, ch. 933, § 7. July 1, 2018.

57-1-104. Name and domicile — Meetings — Quorum.

(a) The official name of the commission shall be the Tennessee alcoholic beverage commission and its official domicile shall be in Nashville. All meetings of the commission shall be held in Nashville.

(b) The commission shall elect one (1) of its own members as chair, and the commission shall meet at least one (1) time in Nashville each month, and shall hold such other meetings for any period of time as may be necessary for the commission to transact and perform its official duties and functions. The commission may hold a special meeting at any time it deems necessary and advisable in the performance of its official duties. Two (2) members of the commission shall constitute a quorum for the transaction of any business, or in the performance of any duty, power or function of the commission. A special meeting may be called by the chair, or by a majority of the commission.

History.

Acts 1963, ch. 257, § 3; T.C.A., § 57-803.

57-1-105. Director — Salary — Qualifications — Duties — Assistant director.

(a) The commission is hereby authorized to appoint a director to serve at the pleasure of the commission. The director's salary shall be fixed by the commission with the approval of the appropriate state officials as now required by law. The office of the director shall be at Nashville.

(b) The director shall be at least thirty (30) years of age, and shall have been a citizen and resident of this state for at least five (5) years prior to appointment. The director shall be licensed to practice law in this state. The director shall be designated as director, alcoholic beverage commission.

(c) The director shall be the chief administrative officer of the commission and all personnel employed by the commission shall be under the director's direct supervision. The director shall be solely responsible to the commission for the administration and enforcement of this chapter and shall be responsible for the performance of all duties and functions delegated by the commission.

(d) The director shall keep and be responsible for all records of the commission and shall also serve as secretary of the commission. The director shall prepare and keep the minutes of all meetings held by the commission, including a record of all business transacted and decisions rendered by the commission.

(e) The commission is hereby authorized to appoint an assistant director who shall perform such duties and functions which may be assigned by the director or the commission. The assistant director, if licensed to practice law in this state, may also be designated by the commission to sit, act and serve as a

hearing officer and when designated as a hearing officer, the assistant director shall be authorized to perform the same duties and functions as the regular hearing officer is now authorized under this chapter and title.

(f) The director and assistant director shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 1963, ch. 257, § 4; 1970, ch. 452, § 1; 1976, ch. 806, § 1(12); T.C.A., § 57-804.

Attorney General Opinions.
Discrimination, OAG 89-73 1989 Tenn. AG LEXIS 55 (5/3/89).

57-1-106. Hearing officer — Service of process.

(a) The director shall act and serve as hearing officer when designated by the commission and shall perform such duties as hearing officer as now authorized under this chapter.

(b) In any action or suit brought against the members of the commission in their official capacity in a court of competent jurisdiction, to review any decision or order issued by the commission, service of process issued against the commission may in their absence be lawfully served or accepted by the director on behalf of the commission as though the members of the commission were personally served with process.

History.
Acts 1963, ch. 257, § 5; T.C.A., § 57-805.

57-1-107. Chief law enforcement officer — Appointment — Qualifications — Travel expenses.

The commission is hereby authorized to appoint a chief law enforcement officer who shall serve at the pleasure of the commission. The chief law enforcement officer shall:

(1) Be under the immediate supervision of the director;

(2) Be at least thirty (30) years of age;

(3) Have been a citizen and resident of this state for at least five (5) years prior to appointment;

(4) Have had experience and training in law enforcement work and qualifications identical to that required for members of the Tennessee bureau of investigation; and

(5) Be reimbursed for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 1963, ch. 257, § 6; 1976, ch. 806, § 1(12); T.C.A., § 57-806.

57-1-108. Interests precluding appointment to or employment by commission.

(a) No person shall be eligible to be appointed as a member of the

commission, and no person shall be employed in any capacity by the commission, if such person shall have any interest, financial or otherwise, either direct or indirect, in any distillery, wholesale dealer or retail dealer licensed as such in this state. No family member, including spouse, child or children, father or mother, niece or nephew by blood or marriage, son-in-law or daughter-in-law, shall be employed by any distillery, wholesale dealer or retail dealer, nor shall any family member hold or have issued to them any alcoholic beverage license in this state.

(b) No such person shall have interest of any kind in any building, fixtures, or in the premises occupied by any person, firm or corporation licensed under this chapter.

(c) No such person shall own any stock, nor shall have any interest of any kind, direct or indirect, pecuniary or otherwise, by a loan, mortgage, gift, seeking a loan, or guaranteeing the payment of any loan, in any distillery, wholesale dealer or retail dealer licensed under this chapter.

(d) This section shall not apply to server permits issued under § 57-3-704.

History.
Acts 1963, ch. 257, § 7; T.C.A., § 57-807; 2017, ch. 147, § 1.

Attorney General Opinions.
Conflicts of interest, commission members, OAG 94-062, 1994 Tenn. AG LEXIS 65 (4/20/94).

57-1-109. Commissioners prohibited from accepting gifts or bribes — Conspiracy — Penalty.

(a) No member of the commission and no person employed by the commission shall accept any gift, favor, merchandise, donation, contribution, or any article or thing of value, from any person, firm or corporation licensed under this chapter.

(b) No such person shall conspire with any other person to violate this section or attempt to violate this section.

(c) Any person violating this section shall be dismissed and discharged from employment or position, and as a consequence such person shall forfeit any pay or compensation which might be due.

(d) A violation of this section is a Class C misdemeanor.

History.
Acts 1963, ch. 257, § 8; T.C.A., § 57-808; Acts 1989, ch. 591, § 113.

Cross-References.
Banks or affiliates of banks, unlawful receipt of gratuity or compensation, § 45-2-1704.
Penalty for Class C misdemeanor, § 40-35-111.

NOTES TO DECISIONS

1. Favors.
The right to designate the recipient of a valuable financial benefit constituted a favor. Inglewood Warehouse Liquors v. Tennessee Alcoholic Beverage Com., 692 S.W.2d 858, 1985 Tenn. App. LEXIS 2719 (Tenn. Ct. App. 1985).

57-1-110. Offering gifts or bribes to commissioners — Penalty.

When any distillery, wholesaler or retailer licensed under this chapter, or any person employed by any such distillery, wholesaler or retailer, violates, conspires with any other person to violate, or attempts to violate § 57-1-109, it is the mandatory duty of the commission to revoke such person's license and permit.

History.
Acts 1963, ch. 257, § 9; T.C.A., § 57-809.

57-1-111. Full-time employment.

The director, the chief law enforcement officer and all other law enforcement personnel shall be employed only on a full-time basis.

History.
Acts 1963, ch. 257, § 10; T.C.A., § 57-810; Acts 2012, ch. 968, § 6.

Cross-References.
Duties of secretary of state, § 8-3-104.

57-1-112. "Licensed retailer", "retailer" or "retail licensee" to include retail food store wine licensees.

As used in §§ 57-1-110, 57-3-406(b) and (g) and 57-3-204(c), "licensed retailer", "retailer" or "retail licensee" shall be construed to include and apply to retail food stores which have been issued a retail food store wine license.

History.
Acts 2014, ch. 554, § 4.

PART 2

POWERS AND DUTIES OF COMMISSION

57-1-201. Transfer of provisions relating to intoxicating beverages — Authority to impose fine instead of license suspension or revocation.

(a) The entire provisions, definitions and terms of chapter 3, parts 1, 2 and 4 of this title, § 57-3-304 and the authority contained therein are hereby transferred and shall be vested under the jurisdiction of the alcoholic beverage commission as though all of the provisions of such sections were set out and copied verbatim herein for the purpose of the commission to carry out this chapter.

(b)(1)(A) In any case where the commission is given the power to suspend or revoke any license or permit, it may impose a fine. Fines imposed shall:

(i) Not exceed five hundred dollars ($500) for servers permitted under § 57-4-203(h) and the Alcohol Server Responsibility and Training Act of 1995, compiled in chapter 3, part 7 of this title;

(ii) Not exceed one thousand five hundred dollars ($1,500) for retailers licensed under § 57-3-204; provided, that the commission may impose a fine in excess of one thousand five hundred dollars ($1,500) in accordance with § 57-3-406(d)(3);

(iii) Not exceed one thousand five hundred dollars ($1,500) for permittees authorized to sell alcoholic beverages for consumption on the premises under § 57-4-201; provided, that the commission may impose a fine in excess of one thousand five hundred dollars ($1,500) in accordance with § 57-4-203(b)(1)(C);

(iv) Not exceed two thousand dollars ($2,000) for wholesalers licensed under § 57-3-203; and

(v) Not exceed ten thousand dollars ($10,000) for manufacturers licensed under chapter 2 of this title or § 57-3-202.

(B) For the purpose of imposing fines hereunder, each violation may be treated as a separate offense.

(C) Notwithstanding subdivision (b)(1)(A), no administrative action, including the imposition of a fine, may be brought against a wholesaler for a violation of § 57-3-301(d) unless, prior to bringing the action, the commissioner of revenue has provided written notice to the wholesaler advising the wholesaler that the tax for a brand of liquor has not been paid by a supplier.

(2) The commission shall deposit collections of any such fine with the state treasurer, for the general funds of the state.

(3) The commission shall promulgate by rule pursuant to the Administrative Procedures Act, compiled in title 4, chapter 5, a schedule setting forth a range of fines for each violation.

(c) Any document a person receives informing the person of having a fine imposed upon such person shall cite each particular rule or statute the person is being charged with violating.

(d) In any case where the commission is authorized to suspend or revoke a license or permit, it may enter into an agreement by order with the licensee or permittee where the licensee or permittee voluntarily surrenders the license or permit. Such surrender shall be deemed a revocation of the license or permit.

History.
Acts 1963, ch. 257, §§ 11-32, 34-49; T.C.A., § 57-811; Acts 1981, ch. 474, § 1; 1985, ch. 76, § 2; 2001, ch. 79, §§ 1-3; 2008, ch. 773, § 1; 2012, ch. 947, § 7; 2016, ch. 898, §§ 1, 4; 2016, ch. 908, § 1; 2017, ch. 147, § 14.

57-1-202. Transfer of provisions relating to contraband liquor.

The duties, authority, powers and functions as contained and enumerated in § 57-9-115 and chapter 9, part 2 of this title are hereby transferred and vested in the commission as though the same were set out and copied verbatim herein, for the purpose of carrying out this chapter.

History.
Acts 1963, ch. 258, §§ 2, 3; T.C.A., § 57-812.

57-1-203. Transfer of duties relating to price regulations.

Certain duties, powers and functions authorized under chapter 6, part 2 of this title are hereby transferred and vested in the alcoholic beverage commission as though the same were set out and copied verbatim herein, for the purpose of carrying out this chapter, except those duties, powers, and functions as provided for in § 57-1-204.

History.
Acts 1963, ch. 259, § 2; T.C.A., § 57-813.

57-1-204. Department of revenue authority to collect certain taxes and make audits — Appropriation of funds to commission.

(a) The department of revenue shall continue to collect the tax as levied and imposed under § 57-6-201, and the required monthly reports thereunder shall continue to be made to the department.

(b) All such tax collected by the department shall be deposited in the treasury of the state to the credit of and to be used by the commission for the purpose of carrying out this chapter. Such funds are hereby appropriated to the commission for the purpose of the administration and enforcement of the duties, powers and functions of the commission.

(c) The authority now vested in the commissioner of revenue to make the required audits, examinations of books, records and papers, and the filing of invoices, as provided for under § 57-6-202, shall remain vested in the commissioner.

History.
Acts 1963, ch. 259, § 3; T.C.A., § 57-814.

57-1-205. Alcoholic beverage tax collection.

The alcoholic beverage tax levied and authorized to be collected under §§ 57-3-302 and 57-3-303 shall continue to be collected by the commissioner of revenue in the same manner as now prescribed by law.

History.
Acts 1963, ch. 257, § 33; T.C.A., § 57-815.

57-1-206. [Reserved.]

57-1-207. Delinquent tax — Penalty — Reports.

(a) The commissioner of revenue shall make a written report monthly to the alcoholic beverage commission showing the name of each licensed dealer who is delinquent in the payment or remittance of any tax owing to this state, and such report shall show the kind and amount of such delinquent tax. Each page of the written report shall be on paper measuring eight and one-half inches by eleven inches (8½″ x 11″) and shall contain information on not more than one (1) licensed dealer who is delinquent in the payment or remittance of any tax owing to this state.

(b) Each licensed dealer who is delinquent in the payment or remittance of any of the taxes imposed upon such dealer by law, and who fails, refuses or neglects to pay the tax when due, may have that dealer's license suspended by the commission in its discretion after due notice and hearing as now authorized under § 57-3-214. If a dealer is delinquent in paying the required taxes for as many as three (3) times in a calendar year, the commission may revoke the dealer's license.

(c) The commissioner of revenue shall on or before December 1 of each calendar year furnish to the commission a written report showing the name of

each licensed dealer who is delinquent in the payment or remittance of any tax owing to this state. Each page of the written report shall be on paper measuring eight and one-half inches by eleven inches (8½″ x 11″) and shall contain information on not more than one (1) licensed dealer who is delinquent in the payment or remittance of any tax owing to this state. The report shall include the kind and the amount of such delinquent tax. Any dealer delinquent in taxes shall not have that dealer's license renewed by the commission for the next calendar year until all of the delinquent taxes have been paid, and so certified to the commission by the commissioner of revenue.

History.
Acts 1963, ch. 257, § 33; T.C.A., § 57-817; Acts 1993, ch. 144, § 1; 1999, ch. 403, §§ 3, 4.

Textbooks.
Tennessee Jurisprudence, 4 Tenn. Juris., Bankruptcy, § 6.

57-1-208. [Repealed.]

History.
Acts 1979, ch. 394, § 1; T.C.A., § 57-820; Acts 1984, ch. 915, § 2; 2017, ch. 372, § 1; repealed by Acts 2017, ch. 372, § 1, effective January 1, 2018.

Compiler's Notes.
Former § 57-1-208, concerning enforcement of § 39-17-417(g), was repealed by Acts 2017, ch. 372, § 1, effective January 1, 2018.

57-1-209. Rules and regulations — Annual report.

(a) The commission is hereby authorized to adopt and promulgate the present rules and regulations which are in existence pertaining to alcoholic beverages, and the commission may in its discretion alter, amend or repeal any of such parts of such rules and regulations as it deems necessary. The commission may promulgate rules governing the conduct of educational seminars conducted by businesses licensed pursuant to § 57-3-204, and such regulation may include the transportation and serving for sampling purposes only alcoholic beverages, notwithstanding §§ 57-3-402 and 57-3-404(h).

(b) The executive director of the commission shall file an annual report with the state and local government committee of the senate and the state government committee of the house of representatives no later than March 1 detailing with specificity each rule promulgated during the previous year together with the rationale for promulgating the rule.

History.
Acts 1963, ch. 257, § 14; T.C.A., § 57-818; Acts 1998, ch. 765, § 1; 2012, ch. 947, § 6; 2013, ch. 236, § 68.

Textbooks.
Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 3, 4.

NOTES TO DECISIONS

1. Transfer of Authority.
T.C.A. § 57-3-301(g) (now (h)), transferred the rule-making power as to brand registration, formerly under T.C.A. § 57-1-209, from the alcoholic beverage commission to the department of revenue. Brown-Forman Distillers Corp. v. Olsen, 676 S.W.2d 567, 1984 Tenn. App. LEXIS 3416 (Tenn. Ct. App. 1984).

57-1-210. Commission — Authority to investigate and/or arrest.

In addition to the other duties imposed under this chapter, the commission is authorized to investigate and/or to arrest, without warrant or process of any

kind, any person whom the arresting officer has probable cause to believe is committing or attempting to commit a felony in violation of title 39, chapter 17, part 4, if the felony is committed on premises licensed by the commission, on any premises under investigation by the commission in conjunction with its other duties and responsibilities, and/or any other premises selling alcoholic beverages as defined in § 57-3-101, whether licensed or unlicensed.

History.
Acts 1991, ch. 166, § 1.

57-1-211. Warning signs at retail establishments.

(a) Each licensee which sells alcoholic beverages at retail not for consumption on the premises and each licensee which sells alcoholic beverages for consumption on the premises shall post, in a prominent place easily seen by its customers, a warning sign supplied by the alcoholic beverage commission, which meets the requirements of subsections (b) and (c). The signs shall contain a warning that drinking alcoholic beverages during pregnancy can cause birth defects, including fetal alcohol syndrome and fetal alcohol effects.

(b) The alcoholic beverage commission shall prepare the signs required by this section and make them available at no cost to those licensees described in subsection (a) by August 30, 1997, and when a new license is issued to a person for the sale of alcoholic beverages at retail or for consumption on the premises. The bureau of alcohol and drug abuse services shall assist the alcoholic beverage commission in preparing such signs upon request of the commission.

(c) The signs required by this section shall be composed of black, capital letters printed on white laminated paper at a minimum weight of one hundred ten pound (110 lb.) index. The letters comprising the word "WARNING" shall be highlighted black lettering and such word shall be larger than all other lettering on the sign. The size of the sign shall be approximately thirteen inches (13″) by nine and one-half inches (9 ½″).

(d) If the alcoholic beverage commission finds that a licensee has failed to post the sign required by this section, the alcoholic beverage commission shall notify the licensee in writing of the violation. A licensee who fails to post such sign within twenty-four (24) hours of receiving such written notification shall be subject to a civil penalty not to exceed twenty-five dollars ($25.00) for each day the licensee is in violation.

History.
Acts 1997, ch. 492, § 1; 1998, ch. 765, § 4.

Compiler's Notes.
For an Order transferring the bureau of alcohol and drug abuse services from the department of health to the department of mental health and developmental disabilities, except for functions related to the licensing of alcohol and drug abuse counselors, see Executive Order No. 44 (February 23, 2007).

Cross-References.
Child abuse and neglect, § 39-15-401.

57-1-212. Retired agents' service weapons after twenty-five (25) years of service.

Any agent of the alcoholic beverage commission who retires after twenty-five (25) years of honorable service shall be issued by the commission a retired commission card, which shall identify the agent, the agent's department and

rank, and the fact that the agent is retired. Cards issued under this provision shall bear the inscription, in print of equal or larger size than the rest of the printing on the card, the words "Not a handgun permit." After twenty-five (25) years of honorable service as an agent of the commission, the commission shall authorize the agent, upon retirement, to retain the agent's service weapon, in recognition of the agent's many years of good and faithful public service.

History.
T.C.A., § 38–6–105(b).

Code Commission Notes. This section was transferred from former § 38-6-105(b) by the code commission in 2006.

57-1-213. Assessment of costs of hearing held in accordance with contested case provisions.

(a) Notwithstanding any other law to the contrary, the alcoholic beverage commission may assess the actual and reasonable costs of any hearing held in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, and in which sanctions of any kind are imposed on any person or entity required to be licensed, permitted, registered or otherwise authorized by the commission. These costs may include, but are not limited to, those incurred and assessed for the time of the prosecuting attorneys, investigators, expert witnesses, administrative judges and any other persons involved in the investigation, prosecution and hearing of the action.

(b) The commission shall promulgate rules and regulations establishing a schedule of costs that may be assessed pursuant to this section. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c)(1) All costs assessed pursuant to this section shall become final thirty (30) days after the date a final order of assessment is served.

(2) If the individual or entity disciplined fails to pay an assessment when it becomes final, the commission may apply to the appropriate court for a judgment and seek execution of the judgment.

(3) Jurisdiction for recovery of the costs shall be in the chancery court of Davidson County.

History.
Acts 2012, ch. 1063, § 1.

57-1-214. Suspension or revocation of license to sell alcoholic beverages and beer or malt beverages.

(a)(1) In any county other than those included in §§ 57-4-202(d) and 57-5-108(p), if the alcoholic beverage commission suspends or revokes a license to sell alcoholic beverages on the premises at any establishment for any violation or violations as provided in chapter 4 of this title, then the commission shall notify the local beer board responsible for controlling the sale of beer or malt beverages within such county by certified mail, return receipt requested, of the action taken by the commission. Such notice shall include the record of evidence and the determination made by the commis-

sion in suspending or revoking the license of the establishment.

(2) Upon receipt of such notice, the local beer board may temporarily suspend the beer permit of the establishment and shall:

(A) Schedule a hearing for the next regularly scheduled meeting of the local beer board to be held at least fourteen (14) days following the date the local beer board receives the certified letter to provide an opportunity for the permit holder to appear and show cause why the permit to sell beer on the premises should not be suspended or revoked for a violation or violations as provided in chapter 4 of this title, based on actions taken by the commission; and

(B) Notify the individual or business entity, which is listed as the permit holder at the same location where the alcoholic beverage license had been suspended or revoked, of the date and time of the hearing.

(3) If the local beer board finds at a hearing that a sufficient violation or violations have occurred as provided in chapter 4 of this title, at such location, then the local beer board may suspend or revoke the permit to the same extent and at least for the same period of time as the commission has suspended or revoked the license of the establishment.

(4) If the permit holder fails to appear or decides to surrender the permit to the local beer board in lieu of appearing at the hearing, the permit may be suspended or revoked by the local beer board; provided, that if the permit is suspended or revoked, no permit to sell beer or malt beverages on the premises shall be issued by the local beer board to any person for the location where the commission had suspended or revoked the license for the period of time included in the decision of the commission.

(5) The decision of the local beer board is final, and any party aggrieved thereby may appeal the decision of the local beer board in accordance with § 57-5-108.

(b)(1) In any county other than those included in §§ 57-4-202(d) and 57-5-108(p), if a local beer board responsible for controlling the sale of beer or malt beverages finds a violation or violations, as provided in chapter 4 of this title, in the sale of beer or malt beverages consumed on-premises of an establishment located within the local beer board's jurisdiction that result in the local beer board suspending the operation of or revoking the permit of the establishment where the violation or violations occurred, then the local beer board shall notify the executive director of the commission by certified mail, return receipt requested, of the action taken by the local beer board. Such notice shall include the record of evidence and the determination made by the local beer board in suspending or revoking the permit.

(2) Upon receipt of such notice, the executive director of the commission may take the action with respect to a violation or violations as provided in chapter 4 of this title, related to the license for the sale of alcoholic beverages for consumption on the premises at the location where the violation or violations of the chapter occurred.

(3) The suspension or revocation decision of the local beer board made pursuant to this subsection (b) is final, and any party aggrieved thereby may appeal the decision of the local beer board in accordance with § 57-5-108.

History.
Acts 2013, ch. 316, § 1.

CHAPTER 2

LOCAL OPTION—MANUFACTURE ONLY

Section
57-2-101. "Intoxicating liquors" and "intoxicating drinks" defined — Fuel alcohol exception.
57-2-102. Privilege taxes on manufacturer — License.
57-2-103. Manufacturing of intoxicating liquors — Petition — Election.
57-2-104. Possession, storage or transportation by manufacturer lawful — Rights limited.
57-2-105. Restrictions on sale within state.
57-2-106. Restrictions on labeling of intoxicating liquors as Tennessee whiskeys.
57-2-107. Hours of sale for licensed manufacturer to sell at retail.
57-2-108. Use of name "Tennessee Moonshine".
57-2-109. Adoption of ordinance to prohibit construction or operation of licensed manufacturer under § 57-3-202 — Applicability.

57-2-101. "Intoxicating liquors" and "intoxicating drinks" defined — Fuel alcohol exception.

(a) "Intoxicating liquors" or "intoxicating drinks," as defined in this chapter, means and includes alcohol, spirits, liquors, wines and every liquid or solid, patented or not, containing alcohol, spirits, liquor or wine, and capable of being consumed by human beings; but nothing in this chapter shall be construed or defined as including or relating to the manufacture of beer as defined in § 57-5-101(b).

(b) This title shall not apply to fuel alcohol as it is defined in § 67-3-1203, and this title shall not apply to ethanol that is produced in a facility whose production process is primarily a wet milling process, sold and transported in bulk lots of five thousand gallons (5,000 gals.) or more and not packaged for retail sale by the holder of a valid alcohol fuels permit or a valid distilled spirits permit:

(1) For export to another country;

(2) To a domestic manufacturer, distiller, vintner, or rectifier who is a duly licensed alcohol beverage or liquor manufacturer in this or some other state; or

(3) To a manufacturer who uses the ethanol to create a product which is incapable of human consumption or contains less than one-half of one percent (0.5%) alcohol by volume.

(c) This title shall not apply to the production of products that have received approval from the alcohol and tobacco tax and trade bureau (TTB) as a non-beverage product.

History.
Acts 1937, ch. 193, § 2; C. Supp. 1950, § 6648.2; T.C.A. (orig. ed.), § 57-103; Acts 1980, ch. 786, § 3; 1997, ch. 155, § 1; 2012, ch. 968, § 1; 2014, ch. 861, § 3; 2017, ch. 338, § 5.

Cross-References.
Beer wholesaler-supplier relations, title 57, ch. 5, part 5.

Definition of ethanol, § 67-3-103.

Textbooks.
Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 2, 5, 6, 8.

NOTES TO DECISIONS

1. Constitutionality.

Failure of original act to recite in its caption that it had the effect of amending former T.C.A. §§ 39-6-916 and 39-6-917 did not cause such act to be unconstitutional under the provisions of Tenn. Const., art. II, § 17, since such constitutional provision does not apply to acts which by their positive provisions operate to repeal or annul previous acts by necessary implication. Clark v. State, 172 Tenn. 429, 113 S.W.2d 374, 1937 Tenn. LEXIS 92 (1938).

57-2-102. Privilege taxes on manufacturer — License.

(a) Before anyone shall engage in manufacturing of intoxicants, as defined in this chapter, within a county, a privilege tax shall be paid in the sum of one thousand dollars ($1,000) to the state and to the county in which the manufacturing plant is located; and a license shall be issued by the department of revenue and by the county legislative body of such county as authorizes the operation of the manufacturing business within the boundaries of such county.

(b) If the manufacturing plant is located within the boundaries of a municipality, likewise a privilege tax of one thousand dollars ($1,000) shall be paid to the municipality, and a license also shall issue by the proper authorities of the municipality, authorizing the manufacturing plant to operate.

History.

Acts 1937, ch. 193, § 1; C. Supp. 1950, § 6648.1; impl. am. Acts 1959, ch. 9, § 14; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 57-102.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 6.

57-2-103. Manufacturing of intoxicating liquors — Petition — Election.

(a) The county legislative body of any county shall have the right and power, and such county authorities shall have the duty, to call and direct the county election commission to hold an election at any time, upon the filing and presentation of a petition bearing the genuine signatures of ten percent (10%) or more of the qualified voters of such county, based upon the number of votes cast in the last preceding presidential election in such county. Such petition shall be addressed to the county legislative body, and shall contain such language as to request, or to call upon the county legislative body, to call an election of the qualified voters of the county upon the question of permitting and legalizing the manufacture of intoxicating liquors and other intoxicating drinks within the boundaries of the county.

(b) Upon the adoption of a motion or resolution by the county legislative body directing the holding of an election, the county clerk shall file a certified copy of the motion or resolution with the county election commission.

(c) If a majority of the qualified votes cast in such election, in a county so holding an election, favors the manufacture of intoxicating liquors or other intoxicating drinks, as herein provided, in that event, it shall be lawful to manufacture intoxicating liquors and/or intoxicating drinks within the boundaries of such county.

(d)(1) Notwithstanding subsections (a)-(c), it shall be lawful to manufacture intoxicating liquors or intoxicating drinks, or both, within the boundaries of:

(A) A municipality if both retail package sales and consumption of alcoholic beverages on the premises have been approved through referendum of voters within such municipality;

(B) A municipality that has approved consumption of alcoholic beverages on the premises within the municipality by local option election and that is located in a county having a population of not less than forty-eight thousand five hundred (48,500) and not more than forty-eight thousand six hundred (48,600), according to the 2010 federal census or any subsequent federal census;

(C) The unincorporated areas of a county, or a municipality which has a population of less than one thousand (1,000) persons in such county, if any jurisdiction located within such county has approved retail package sales through referendum of voters and any jurisdiction located within such county has approved consumption of alcoholic beverages on the premises through referendum of voters or if the county is included in the Tennessee River resort district as defined in § 57-4-102 and retail package sales have been approved through referendum by the voters in any jurisdiction within such county;

(D) Any municipality authorized under § 57-4-102(27) to allow facilities or establishments in such municipality to sell alcoholic beverages or wine for on premises consumption;

(E) Any county or municipality where it was lawful to have manufacturing of intoxicating liquors or intoxicating drinks, or both under this subsection (d) as it read prior to July 1, 2013; or

(F) Any county that has at least three (3) establishments, located in such county or in any municipality in such county, licensed under § 57-4-102(27) to sell alcoholic beverages for on-premises consumption if such county was included in this subsection (d) as it read prior to July 1, 2013.

(2)(A) Notwithstanding subdivision (d)(1), the county legislative body of any such county may adopt a resolution to remove the unincorporated areas of the county from the application of this subsection (d) subject to the restrictions in subdivision (d)(2)(B). The county mayor shall notify the alcoholic beverage commission if such action is taken and approved.

(B) Such action may be taken by the county legislative body pursuant to subdivision (d)(2)(A) until a written notification is filed with the county mayor by any person as an official notice that the person intends to pursue all lawful avenues to manufacture intoxicating liquors or intoxicating drinks, or both, within the unincorporated areas of the county. Once the notice is filed, no action may be taken by the county legislative body unless such interest is withdrawn or the person's application to manufacture such intoxicating liquors or intoxicating drinks, or both, is denied by the state or federal government. A written notification as described pursuant to this subdivision (d)(2)(B) may not be filed with the county mayor until at least forty-five (45) days after July 1, 2013.

(C) If a county adopts a resolution pursuant to subdivision (d)(2)(A), the county may at a later date adopt a resolution reversing such action. The county mayor shall notify the alcoholic beverage commission if such action

is taken and approved.

(3)(A) Notwithstanding subdivision (d)(1), the legislative body of any municipality may adopt a resolution to remove the municipality from the application of this subsection (d) subject to the restrictions in subdivision (d)(3)(B). The legislative body of the municipality shall notify the alcoholic beverage commission if such action is taken and approved.

(B) Such action may be taken by the legislative body of the municipality pursuant to subdivision (d)(3)(A) until a written notification is filed with the legislative body of the municipality by any person as an official notice that the person intends to pursue all lawful avenues to manufacture intoxicating liquors or intoxicating drinks, or both, within the boundaries of the municipality. Once the notice is filed, no action may be taken by the legislative body of the municipality unless such interest is withdrawn or the person's application to manufacture such intoxicating liquors or intoxicating drinks, or both, is denied by the state or federal government. A written notification as described pursuant to this subdivision (d)(3)(B) may not be filed with the legislative body of the municipality until at least forty-five (45) days after July 1, 2013.

(C) If a municipality adopts a resolution pursuant to subdivision (d)(3)(A), the municipality may at a later date adopt a resolution reversing such action. The legislative body of the municipality shall notify the alcoholic beverage commission if such action is taken and approved.

(4) If a manufacturer that has been issued a license pursuant to this subsection (d) is also selling the manufacturer's alcoholic beverages or products at retail and the manufacturer is located in a jurisdiction that pursuant to § 57-5-105 has established a distance requirement that restricts the storage, sale or manufacture of beer from places of public gatherings or in a municipality or Class B county that pursuant to § 57-5-106 has adopted proper ordinances governing the storage, sale, manufacture and/or distribution of beer within its jurisdictional boundary, then any distance requirement related to a building used for religious purposes or a building used as an elementary or secondary school in effect in that jurisdiction shall apply to the building used for the retail sale of the manufacturer's alcoholic beverages or products containing alcohol. The measurement shall be a building-to-building measurement.

(5) Notwithstanding subsections (a)-(c) and subdivision (d)(1), it shall be lawful to manufacture intoxicating liquors or intoxicating drinks, or both, on property that is listed on the National Register of Historic Places and where intoxicating liquors or intoxicating drinks, or both, were previously distilled on such property, or approximately on such property.

(6) A municipality as described in § 57-4-102(27)(B) may adopt an ordinance imposing a minimum distance, not to exceed one thousand feet (1,000′), between distilleries manufacturing distilled spirits; provided, that the ordinance shall not apply to or affect any licensed distillery in operation and open to the public prior to April 12, 2016. A distillery that is exempt from an ordinance adopted under this subdivision (d)(6) shall remain exempt from any ordinance adopted under this subdivision (d)(6) upon the transfer of any ownership interest in the distillery to a successor in interest.

(e) Any manufacturer's license issued pursuant to subsection (c) or (d) shall comply with § 57-3-202.

(f)(1) Notwithstanding subsections (a)-(c), it shall be lawful to manufacture high alcohol content beer as defined in § 57-3-101(a) within the boundaries of:

(A) A municipality if both retail package sales and consumption of alcoholic beverages on the premises have been approved through voter referendum of voters within such municipality; or

(B) The unincorporated areas of a county if any jurisdiction located within such county has approved retail package sales through referendum of voters and any jurisdiction located within such county has approved consumption of alcoholic beverages on the premises through referendum of voters or if the county is included in the Tennessee River resort district as defined in § 57-4-102 and retail package sales have been approved through voter referendum in any jurisdiction within the county.

(2) Any manufacturer authorized pursuant to subdivision (f)(1) must also hold a brewer's notice approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau, or any successor federal beer manufacturing permit granted by a federal bureau having jurisdiction over the manufacture of beer.

(3) In all jurisdictions not meeting the requirements of subdivision (f)(1), it shall be lawful to manufacture high alcohol content beer as defined in § 57-3-101(a) within the boundaries of a municipality or in the unincorporated area of such county upon such jurisdiction meeting the requirements of subsections (a)-(c), and if the manufacturer also holds a brewer's notice approved by the United States department of the treasury, alcohol and tobacco tax and trade bureau, or any successor federal beer manufacturing permit granted by a federal bureau having jurisdiction over the manufacture of beer.

(4) Notwithstanding any other law to the contrary, it shall be lawful for any manufacturer of high alcohol content beer authorized to manufacture such beverages pursuant to subdivision (f)(1) to also brew beer as this term is defined in § 57-5-101(b) on the same premises of the manufacturer of high alcohol content beer, upon meeting necessary federal, state and local license requirements.

(5) The general assembly hereby ratifies any action which may have been taken by the alcoholic beverage commission in issuing a license to a manufacturer of high alcohol content beer prior to June 10, 2011.

(g) The general assembly hereby ratifies any action which may have been taken by the alcoholic beverage commission in issuing a license to a manufacturer of intoxicating liquors or intoxicating drinks, or both prior to July 1, 2013.

(h)(1) Any person who has received a manufacturing license for intoxicating liquors or intoxicating drinks, or both from the alcoholic beverage commission or who has an application for such manufacturing license pending with the commission on July 1, 2013, may still receive and be able to renew the license if the person was authorized to apply for such license under this section prior to July 1, 2013.

(2) Any person who has received the necessary permit to manufacture intoxicating liquors or intoxicating drinks, or both from the alcohol and tobacco tax and trade bureau (TTB) or who has an application for such permit pending with the TTB on July 1, 2013, may still receive and be able to renew a manufacturing license from the alcoholic beverage commission if the person was authorized to apply for such manufacturing license under this section prior to July 1, 2013.

(3) If any person obtains a manufacturing permit pursuant to this subsection (h), then the jurisdiction such licensee is located in shall be allowed to have other manufacturers located in such jurisdiction, notwithstanding subdivision (d)(1).

History.

Acts 1937, ch. 193, § 1; C. Supp. 1950, § 6648.1; impl. am. Acts 1953, ch. 88, § 1; Acts 1972, ch. 740, § 4(65); impl. am. Acts 1978, ch. 934, §§ 7, 22, 36; T.C.A. (orig. ed.), § 57-101; Acts 2009, ch. 524, § 1; 2011, ch. 448, § 12; 2012, ch. 515, § 1; 2013, ch. 445, §§ 1, 2; 2014, ch. 875, § 1; 2016, ch. 786, § 1; 2018, ch. 650, § 1.

Compiler's Notes.

For tables of population of Tennessee municipalities, see Volume 13 and its supplement.

Amendments.

The 2018 amendment added present (d)(1)(B) and redesignated former (d)(1)(B)-(E) as present (d)(1)(C)-(F), respectively.

Effective Dates.

Acts 2018, ch. 650, § 2. April 9, 2018.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 6, 14, 22; 18 Tenn. Juris., Mandamus, § 9.

Attorney General Opinions.

Manufacture of intoxicating liquors in Hamilton County. OAG 12-93, 2012 Tenn. AG LEXIS 91 (10/3/12).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Calling of Election.
3. Mandamus to Compel Election.

1. Constitutionality.

Local option provision of this section was a "condition" within the meaning of the caption of the original act providing for the manufacture of intoxicating liquors "under certain conditions" so that the act was not unconstitutional as embracing more than one subject or as embracing a subject not expressed in the title. Clark v. State, 172 Tenn. 429, 113 S.W.2d 374, 1937 Tenn. LEXIS 92 (1938).

Provision of this section permitting local option by the counties on question of whether or not such counties would permit the manufacture of intoxicating liquors is not unconstitutional as being a delegation of legislative power to the voters of the various counties since the vote was not for or against the statute as such statute was complete in itself and only its local operative effect was left to the people of the various counties. Clark v. State, 172 Tenn. 429, 113 S.W.2d 374, 1937 Tenn. LEXIS 92 (1938).

2. Calling of Election.

This section is mandatory in requiring the county legislative body to call an election for the purposes set forth therein when a petition is filed bearing the genuine signatures of ten percent or more of the qualified voters of such county based on the number of votes cast in the last preceding presidential election. State ex rel. Motlow v. Clark, 173 Tenn. 81, 114 S.W.2d 800, 1937 Tenn. LEXIS 15 (1938).

The fact that the county legislative body can inquire into the sufficiency of a petition filed under this section and into the qualifications of the signers thereto in no way can affect the mandatory duty of the body to call the election if the petition is found to be in proper form and properly signed. State ex rel. Motlow v. Clark, 173 Tenn. 81, 114 S.W.2d 800, 1937 Tenn. LEXIS 15 (1938).

3. Mandamus to Compel Election.

A demurrer to a bill for a writ of mandamus compelling the county legislative body to adopt a resolution directing the county election commission to call an election on the question of legalizing the manufacture of intoxicating liquors in the county admitted an averment in the bill that a proper petition was filed with the body in accordance with the statute. State ex rel. Motlow v. Clark, 173 Tenn. 81, 114 S.W.2d 800, 1937 Tenn. LEXIS 15 (1938).

57-2-104. Possession, storage or transportation by manufacturer lawful — Rights limited.

A manufacturer licensed pursuant to § 57-2-102, or the authorized agent of such licensee, may possess, store, or transport the products of the manufacturing plant within, over, and across the state; provided, that any alcoholic beverages or wine produced at a plant located within this state must be stored within a county that has authorized the manufacture of intoxicating liquors pursuant to § 57-2-103 or in a county adjacent to a county that has authorized the manufacturing operation, and such possession shall be limited to storage facilities owned, authorized, or leased by such manufacturer; and further provided, that such licensee may also possess such alcoholic beverages or wine while being transported, whether within or outside of the state. Common carriers may transport the products of such manufacturing plant only pursuant to an agreement or contract with a licensee under this title.

History.

Acts 1937, ch. 193, § 3; C. Supp. 1950, § 6648.3; T.C.A. (orig. ed.), § 57-104; Acts 2011, ch. 448, § 4; 2013, ch. 341, § 2; 2018, ch. 717, § 1.

Amendments.

The 2018 amendment rewrote the section which read: "It is lawful for the holder of a license issued pursuant to § 57-2-102, or the authorized agent of such licensee, to possess, store or transport the products of the manufacturing plant within, over and across the state; provided, that any alcoholic beverages or wine produced at a plant located within this state shall be stored by the licensee only within the county authorizing the operation or in a county adjacent to the county authorizing the manufacturing operation, and such possession shall be limited to storage facilities of such manufacturer; and further provided, that such licensee may also possess such alcoholic beverages or wine while being transported, whether within or outside of the state. It is lawful for common carriers to transport the products of such manufacturing plant only pursuant to an agreement or contract with a licensee under this title."

Effective Dates.

Acts 2018, ch. 717, § 2. April 12, 2018.

NOTES TO DECISIONS

1. Constitutionality.

Fact that intoxicating liquors manufactured under the local option provisions of title 57, ch. 2 could not be sold to people of Tennessee but could be sold to citizens of other states did not render such act unconstitutional as being class legislation and discriminatory. Clark v. State, 172 Tenn. 429, 113 S.W.2d 374, 1937 Tenn. LEXIS 92 (1938).

57-2-105. Restrictions on sale within state.

(a) Except as otherwise provided by law, nothing in this chapter shall be construed as licensing or legalizing the sale of intoxicating liquors and/or other intoxicating drinks within the state by any distillery or manufacturing plant authorized under this chapter.

(b) Nothing in this chapter shall be construed so as to repeal, or in any manner abridge or affect the present laws of this state concerning the sale of intoxicating liquors of every kind.

History.

Acts 1937, ch. 193, § 1; C. Supp. 1950, § 6648.1; modified; T.C.A. (orig. ed.), § 57-105; Acts 2011, ch. 448, § 5.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 6.

57-2-106. Restrictions on labeling of intoxicating liquors as Tennessee whiskeys.

(a) An intoxicating liquor may not be advertised, described, labeled, named, sold or referred to for marketing or sales purposes as "Tennessee Whiskey," "Tennessee Whisky," "Tennessee Sour Mash Whiskey," or "Tennessee Sour Mash Whisky" unless the intoxicating liquor is:

(1) Manufactured in Tennessee;

(2) Made of a grain mixture that is at least fifty-one percent (51%) corn;

(3) Distilled to no more than one hundred sixty (160) proof or eighty percent (80%) alcohol by volume;

(4) Aged in new, charred oak barrels in Tennessee;

(5) Filtered through maple charcoal prior to aging;

(6) Placed in the barrel at no more than one hundred twenty-five (125) proof or sixty-two and one-half percent (62.5%) alcohol by volume; and

(7) Bottled at not less than eighty (80) proof or forty percent (40%) alcohol by volume.

(b) Any manufacturer who violates this section shall be subject to suspension or revocation of its license for a period of not less than one (1) year.

(c) Subdivision (a)(5) shall not apply to intoxicating liquor manufactured at a distillery located in a county that authorized the manufacturing process by referendum after January 1, 1979, and prior to January 1, 1980; provided, however, that any such distillery was first licensed by the state alcoholic beverage commission after January 1, 2000, and before January 1, 2001.

(d)(1) Any Tennessee corporation, limited liability company or proprietorship that holds a federal distiller basic permit pursuant to 27 U.S.C. § 204 and had a licensed manufacturing operation in this state as of January 1, 2013, may label, market and sell any product owned or contracted to purchase by such permit holder on or after July 1, 2013, for a period of thirty-six (36) months; provided, however, that any product manufactured at such distillery after July 1, 2013, shall meet all the requirements of subsection (a) to be advertised, described, labeled, named, sold or referred to for marketing or sales purposes as "Tennessee Whiskey," "Tennessee Whisky," "Tennessee Sour Mash Whiskey," or "Tennessee Sour Mash Whisky".

(2) This subsection (d) shall apply to any product that is referred to as "Tennessee Whiskey," "Tennessee Whisky," "Tennessee Sour Mash Whiskey," or "Tennessee Sour Mash Whisky" under 27 CFR part 5 on July 1, 2013.

History.
Acts 2013, ch. 341, § 1.

Attorney General Opinions.
T.C.A. § 57-2-106(c) constitutes impermissible discrimination in violation of the equal protection provisions of the Fourteenth Amendment to the United States Constitution, as well as impermissible class legislation in violation of article XI, section 8, of the Tennessee Constitution. OAG 15-23, 2015 Tenn. AG LEXIS 23 (3/18/15).

57-2-107. Hours of sale for licensed manufacturer to sell at retail.

The hours of sale for a manufacturer licensed to sell products at retail under

§ 57-3-204(e) shall be the same as for a manufacturer licensed to sell products at retail under § 57-3-202.

History.
Acts 2013, ch. 341, § 3.

57-2-108. Use of name "Tennessee Moonshine".

(a) Beginning July 1, 2016, an intoxicating liquor may not be advertised, described, labeled, named, sold, or referred to for marketing or sales purposes as "Tennessee Moonshine" unless the intoxicating liquor is distilled in Tennessee.

(b) Any manufacturer who violates this section shall be subject to suspension or revocation of its license for a period of not less than one (1) year.

History.
Acts 2015, ch. 428, § 6.

57-2-109. Adoption of ordinance to prohibit construction or operation of licensed manufacturer under § 57-3-202 — Applicability.

Any city with a population of no less than five thousand eight hundred seventy (5,870) and no greater than five thousand eight hundred seventy-nine (5,879), according to the 2010 federal census or any subsequent federal census may adopt an ordinance to prohibit the construction or operation of any licensed manufacturer in § 57-3-202 within one thousand feet (1,000′) of the state right-of-way of U.S. Highway 441 within the corporate limits of such city. This section shall not affect any licensed manufacturer in operation and open to the public before or on March 24, 2016.

History.
Acts 2016, ch. 695, § 1.

Complier's Notes.
For table of U.S. decennial populations of Tennessee municipalities, see Volume 13 and its supplement.

CHAPTER 3

LOCAL OPTION—TRAFFIC IN INTOXICATING LIQUORS

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PART 1

GENERAL PROVISIONS

57-3-101. Title definitions.

(a) As used in this title, unless the context requires otherwise:

(1)(A) "Alcoholic beverage" or "beverage" means and includes alcohol, spirits, liquor, wine, high alcohol content beer, and every liquid containing alcohol, spirits, wine, and high alcohol content beer and capable of being consumed by a human being, other than patent medicine or beer, as defined in § 57-5-101. Notwithstanding any provision to the contrary in this title, except for beer as defined in § 57-5-101(b), "alcoholic beverage" or "beverage" also includes any liquid product containing distilled alcohol

capable of being consumed by a human being, manufactured or made with distilled alcohol, regardless of alcohol content. Liquid products intended for beverage purposes containing alcohol that do not meet the definition of beer under § 57-5-101(b) shall also be alcoholic beverages. Notwithstanding this subdivision (a)(1)(A), products or beverages containing less than one-half of one percent (0.5%) alcohol by volume, other than wine as defined in this section, shall not be considered to be alcoholic beverages, and shall not be subject to regulation or taxation pursuant to chapters 1-6 and 9 of this title.

(B) Notwithstanding this definition, ethanol produced in a facility whose production process is primarily a wet milling process in bulk and sold and transported in bulk lots of five thousand gallons (5,000 gals.) or more and not packaged for retail sale by the holder of a valid alcohol fuels permit or a valid distilled spirits permit:

(i) For export to another country;

(ii) To a domestic manufacturer, distiller, vintner, or rectifier who is a duly licensed alcohol beverage or liquor manufacturer in this or some other state; or

(iii) To a manufacturer who uses the ethanol to create a product which is incapable of human consumption or contains less than one-half of one percent (0.5%) alcohol by volume;

shall not be considered to be an alcoholic beverage and shall not be subject to regulation or taxation pursuant to chapters 1-6 and 9 of this title;

(2) "Commission" means the alcoholic beverage commission, except as otherwise provided;

(3) "Distiller" means any person who owns, occupies, carries on, works, conducts or operates any distillery either personally or by an agent;

(4) "Distillery" means and includes any place or premises wherein any liquors are manufactured for sale;

(5) "Federal license" does not mean tax receipt or permit;

(6) "Gallon" or "gallons" means a wine gallon or wine gallons, of one hundred and twenty-eight ounces (128 oz.);

(7) "Gift" means and includes the unauthorized distribution of alcoholic beverages by a licensee for which no payment is expected or received; provided, however, that it does not include any such transaction between a licensee and its employee or employees in the normal course of employment or depletions from a licensee's inventory related to routine business or marketing purposes where all applicable taxes have been paid;

(8) "High alcohol content beer" means an alcoholic beverage which is beer, ale or other malt beverage having an alcoholic content of more than eight percent (8%) by weight and not more than twenty percent (20%) by weight, except wine as defined in § 57-3-101, that is brewed, regulated, distributed or sold pursuant to chapter 3 of this title; provided, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol;

(9) "Importer" means any person or entity holding a non-manufacturer non-resident seller's permit pursuant to § 57-3-602(c) or any entity causing

alcoholic beverages to be delivered or shipped into this state holding an importer's basic permit from the alcohol and tobacco tax and trade bureau of the United States department of the treasury;

(10) "License" means the license issued pursuant to this chapter;

(11) "Licensee" means any person to whom such license has been issued pursuant to this chapter;

(12) "Manufacture" means and includes brewing high alcohol content beer, distilling, rectifying and operating a winery;

(13) "Manufacturer" means and includes a brewer of high alcohol content beer, distiller, vintner and rectifier;

(14) "Municipality" means an incorporated town or city having a population of nine hundred twenty-five (925) persons or over by the federal census of 1950 or any subsequent federal census; provided, however, that when any incorporated town or city by ordinance authorizes a census to be taken of such incorporated town or city and shall furnish to the commission a certified copy of the census containing the name, address, age and sex of each person enumerated therein, and if the census shall show that the incorporated town or city has a population of nine hundred twenty-five (925) persons or over, the commission, upon verification of the census, may declare such incorporated town or city to be a "municipality" for all intents and purposes of this chapter;

(15) "Pint" means one eighth (⅛) of a wine gallon;

(16) "Quart" means one fourth (¼) of a wine gallon;

(17) "Rectifier" means and includes any person who rectifies, purifies or refines distilled spirits or wines by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying or refining distilled spirits, shall, by mixing such spirits, wine or other liquor with any material, manufacture any imitation of, or compounds liquors for sale under the name of, whiskey, brandy, gin, rum, wine, spirits, cordials, bitters or any other name;

(18) "Retail food store wine license" means a license for the sale of wine at retail in a retail food store as defined in part 8 of this chapter;

(19) "Retailer" means any person who sells at retail any beverage for the sale of which a license is required under this chapter;

(20) "Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale; provided, however, that it does not include any transaction between a licensee and its employee or employees in the normal course of employment for which no payment is expected or received or depletions from a licensee's inventory related to routine business or marketing purposes where all applicable taxes have been paid;

(21) "Vintner" means any person who owns, occupies, carries on, works, conducts or operates any winery, either personally or by an agent;

(22) "Wholesaler" means any person who sells at wholesale any beverage for the sale of which a license is required under this chapter;

(23) "Wholesale sale" or "sale at wholesale" means a sale to any person for purposes of resale, except that sales by a person licensed under § 57-3-204 to a charitable, nonprofit, or political organization possessing a valid special occasion license for resale by such organizations pursuant to their special

occasion license shall not be construed as such a sale;

(24) "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-one percent (21%) by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which the same was predominantly produced, or an artificial or imitation wine; and

(25) "Winery" means and includes any place or premises wherein wines are manufactured from any fruit or brandies distilled as the by-product of wine or other fruit or cordials compounded, and also includes a winery for the manufacture of wine.

(b) Words importing the masculine gender include the feminine and the neuter, and the singular includes the plural.

History.

Acts 1939, ch. 49, §§ 3, 4, 13; 1949, ch. 284, § 9; C. Supp. 1950, §§ 6648.4, 6648.19 (Williams, §§ 6648.6, 6648.7, 6648.16); Acts 1955, ch. 347, § 2A; impl. am. Acts 1959, ch. 9, § 14; Acts 1963, ch. 257, § 11; modified; T.C.A. (orig. ed.), § 57-106; Acts 1981, ch. 404, § 4; 1982, ch. 877, § 5; 1983, ch. 229, § 4; 1986, ch. 516, § 1; 1989, ch. 325, § 1; 1991, ch. 58, § 1; 1997, ch. 155, § 2; 2005, ch. 298, § 1; 2009, ch. 395, §§ 1, 2; 2011, ch. 448, §§ 7-11; 2014, ch. 554, § 6; 2014, ch. 767, § 3; 2014, ch. 861, § 1; 2015, ch. 269, § 1.

Compiler's Notes.

This chapter, to the extent that the provisions hereof are in direct conflict with the provisions of §§ 12-2-201 — 12-2-204, as to the authority vested by such sections in the commissioner of general services for the advertising and sale of contraband intoxicating beverages and motor vehicles, is repealed by Acts 1959, ch. 303, § 5.

For tables of populations of Tennessee municipalities, see Volume 13 and its supplement.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 2, 5-9, 11, 12, 16, 23.

Law Reviews.

Selected Tennessee Legislation of 1986, 54 Tenn. L. Rev. 457 (1987).

The Wine Is In the Mail: The Twenty-First Amendment and State Laws Against the Direct Shipment of Alcoholic Beverages, 54 Vand. L. Rev. 2495 (2001).

Attorney General Opinions.

Applicability to foodstuff products, OAG 90-31, 1990 Tenn. AG LEXIS 38 (3/7/90).

Hard cider, OAG 94-75, 1994 Tenn. AG LEXIS 78 (7/8/94).

Because a county previously approved liquor-by-the-drink sales through a county-wide referendum, this referendum made such sales legal within a city meeting the definition of a municipality under T.C.A. § 57-3-101; further, the exclusion of certain municipalities from the effects of a county-wide referendum as described in T.C.A. § 57-3-106(g)(1) did not apply to the city because its population is, and always has been, smaller than the least populous county according to the 1960 and subsequent censuses, OAG 02-092, 2002 Tenn. AG LEXIS 97 (8/28/02).

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1. Legislative Authority to Regulate Liquor.
2. Nature of Statute.
3. Application.
4. Effect on Other Statutes.
5. Relation to Interstate Commerce.
6. Definitions.
7. —Retailer.
8. —Consideration in Revocation of Licenses.
9. —Alcoholic Beverage.
10. —Municipality.

1. Legislative Authority to Regulate Liquor.

The right of the state to regulate liquor traffic does not flow from the prohibition amendment, but flows from its police power which was all powerful to deal with the subject of police power regulation unless it distinctly contra-

vened such amendment. State ex rel. Major v. Cummings, 178 Tenn. 378, 158 S.W.2d 713, 1941 Tenn. LEXIS 68, 139 A.L.R. 837 (1942).

2. Nature of Statute.

This statute cannot have effect save as a local option law. Akers v. State, 175 Tenn. 674, 137 S.W.2d 281, 1939 Tenn. LEXIS 91 (1940).

Title 57, ch. 3, is not a local law, in the sense of being passed for the benefit of a particular county only, but is a general statewide law, applicable to the entire state, but effective for its general purposes in such counties only as may adopt it. Vickers v. State, 176 Tenn. 415, 142 S.W.2d 188, 1939 Tenn. LEXIS 132 (1940).

Municipalities may exercise a degree of reasonable regulation after the license is issued, but prior thereto their sole power is to grant or withhold certificates based upon the applicant's character. Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

3. Application.

Title 57, ch. 3 has application only: (1) In excepted territory, when carved out by local will; and (2) Under exceptional circumstances and on specific conditions definitely detailed in this chapter. Chadrick v. State, 175 Tenn. 680, 137 S.W.2d 284, 1939 Tenn. LEXIS 92 (1940).

4. Effect on Other Statutes.

Title 57, ch. 3 does not work a repeal by implication of the provisions of the Code prohibiting the reception, possession and transportation of intoxicating liquors. Akers v. State, 175 Tenn. 674, 137 S.W.2d 281, 1939 Tenn. LEXIS 91 (1940).

5. Relation to Interstate Commerce.

Under the decisions of the federal courts alcoholic beverages retain their interstate commerce character until they actually enter the forbidden state, and if the statutes should be construed so as to prohibit such transportation, they would be void because violative of the commerce clause of U.S. Const., art. 1, § 8, cl. 3. McCanless v. Graham, 177 Tenn. 57, 146 S.W.2d 137, 1940 Tenn. LEXIS 11 (1941).

Where the only act engaged in by defendant which can in any wise be related to these statutes is that of transporting intoxicating liquors from outside the state through dry counties of Tennessee to Mississippi in violation of its statutes, such liquor is not contraband within the meaning of title 57, ch. 3, since those acts are limited to the "manufacture, sale, receipt, possession, storage, transportation and distribution of, and traffic in, alcoholic beverages, in counties and municipalities of this state," as the purpose of the legislature was to make it unlawful to commit such acts in Tennessee, and not to regulate the liquor traffic in other states. McCanless v. Graham, 177 Tenn. 57, 146 S.W.2d 137, 1940 Tenn. LEXIS 11 (1941).

6. Definitions.

7. —Retailer.

Under the definition of a retailer in this section any person who sells whiskey at retail must be regarded as falling within that description regardless of whether he makes one sale or many sales. Hill v. State, 176 Tenn. 475, 144 S.W.2d 734, 1940 Tenn. LEXIS 89 (1940).

8. —Consideration in Revocation of Licenses.

In considering whether terms of licenses had been violated by retailers commissioner could properly consider definitions of "retail sale," "sale at retail," "retailer," "wholesale sale" and "sale at wholesale" as contained in this section and had the discretionary authority to revoke such licenses if he found the holders to be doing a wholesale business. Little v. MacFarland, 206 Tenn. 665, 337 S.W.2d 233, 1960 Tenn. LEXIS 416 (1960).

9. —Alcoholic Beverage.

On appeal, beverage admitted into evidence and examined by jury would be presumed to be capable of being consumed by a human being. State v. Bush, 626 S.W.2d 470, 1981 Tenn. Crim. App. LEXIS 394 (Tenn. Crim. App. 1981).

10. —Municipality.

Only the urban services district, and not the entirety of Davidson County, is a municipality within the definition of T.C.A. § 57-3-101. Templeton v. Metropolitan Government of Nashville & Davidson County, 650 S.W.2d 743, 1983 Tenn. App. LEXIS 699 (Tenn. Ct. App. 1983).

57-3-102. Traffic in intoxicating liquor permitted by local option.

(a) It is lawful to manufacture, store, sell, distribute and purchase alcoholic beverages or wine subject to proper licensing, payment of taxes, compliance with the limitation, regulations and conditions provided in this chapter, in counties or municipalities of this state that by local option elections so permit as provided in this chapter.

(b) It shall be lawful for an individual to transport up to five gallons (5 gals.) of alcoholic beverages or wine for personal or household use of the individual in counties or municipalities that have not permitted the sale of alcoholic

beverages or wine by local option elections as provided in this chapter and amounts in excess of five gallons (5 gals.) if accompanied by a receipt or other documentation demonstrating legal purchase or transport from an entity licensed under § 57-3-203, § 57-3-204, § 57-3-207 or § 57-3-218.

History.
Acts 1939, ch. 49, § 1; C. Supp. 1950, § 6648.5 (Williams, § 6648.4); T.C.A. (orig. ed.), § 57-107; Acts 2009, ch. 434, § 3; 2011, ch. 451, § 4.

Textbooks.
Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 4, 14, 15.

NOTES TO DECISIONS

Analysis

1. Burden to Show Legal Possession Under Statute.
2. Declaratory Judgment.

1. Burden to Show Legal Possession Under Statute.
The burden is on a defendant indicted under the "bone dry law" to show that the possession was legal under the local option law. Renfro v. State, 176 Tenn. 638, 144 S.W.2d 793, 1940 Tenn. LEXIS 112 (1940).

2. Declaratory Judgment.
Suit to establish town as municipality with power to license liquor stores is proper case for declaratory judgment. Crabtree v. Stephens, 198 Tenn. 149, 278 S.W.2d 672, 1955 Tenn. LEXIS 355 (1955).

57-3-103. Construction of chapter.

(a)(1) Nothing in this chapter shall affect chapter 2 of this title.

(2) Alcoholic beverages lawfully manufactured pursuant to chapter 2 of this title may be lawfully sold in Tennessee by a manufacturer to a wholesaler duly licensed, in those counties or municipalities which favor local option after election duly held and carried as hereinafter provided for. Any manufacturer now operating pursuant to chapter 2 of this title may continue to do so without being affected in any way by this chapter, except as otherwise expressly provided herein.

(b) Except as specifically permitted in §§ 57-3-207, 57-3-402 and 57-3-403, no person may store any alcoholic beverages, unless the person holds a license under § 57-3-203, § 57-3-204, § 57-3-218 or § 57-4-101, or is employed by the licensee, unless the alcoholic beverage is intended for that person's personal or social use.

(c) It is the intent of the general assembly to be certain that any product containing or manufactured with distilled alcohol should be distributed only in those jurisdictions authorizing the sale of alcoholic beverages, and such distribution be subject to the rules and regulations of the commission.

History.
Acts 1939, ch. 49, § 2; C. Supp. 1950, § 6648.6 (Williams, § 6648.5); T.C.A. (orig. ed.), § 57-108; Acts 1983, ch. 229, § 5; 1986, ch. 516, §§ 2, 3; 2006, ch. 955, § 1; 2011, ch. 451, § 5; 2014, ch. 554, § 20.

Code Commission Notes. Acts 2014, ch. 861, § 4 purported to amend subdivision (a)(1). Subdivision (a)(1) was previously rewritten by Acts 2014, ch. 554, § 20; therefore the amendment by Acts 2014, ch. 861, § 4 was not given effect by authority of the code commission.

Attorney General Opinions.
Applicability to foodstuff products, OAG 90-31, 1990 Tenn. AG LEXIS 38 (3/7/90).
Hard cider, OAG 94-75, 1994 Tenn. AG LEXIS 78 (7/8/94).

57-3-104. Enforcement and administration by commission — Licensing procedures.

(a) The commission shall have the authority, by and with the consent of the governor, to employ such attorneys, inspectors, agents, officers and clerical assistance as may be necessary for the effective administration and enforcement of this chapter. The compensation of such personnel shall be approved by the governor.

(b) The commission shall enforce and administer this chapter and the rules and regulations made by it.

(c) The commission shall have and exercise the following functions, duties and powers:

(1) Issue all licenses in respect to, or for the manufacture, importation, bottling, keeping, giving away, furnishing, possession, transportation, sale, and delivery of alcoholic beverages, and to revoke any license whatsoever, the issuance of which is authorized by this chapter;

(A) Any revocation of any license shall be made by the commission only on account of the violation of, or refusal to comply with, any of the provisions of this chapter or any rule or regulation of the commission, after not less than ten (10) days' notice to the holder of the license proposed to be revoked, informing such licensee of the time and place of the hearing to be held in respect thereto, and all further procedure with reference to the revocation of any license shall be fixed and prescribed in the rules and regulations adopted and promulgated by the commission, which may be repealed or amended from time to time;

(B) No person has a property right in any license issued hereunder, nor shall the license itself, or the enjoyment thereof, be considered a property right;

(C) The commission shall hold a hearing to determine whether such license shall be revoked, which hearing shall be held with the same notice and in the same manner as all other hearings provided for under this chapter, whenever:

(i) Any county mayor, if a license has been issued outside the corporate limits of the municipality and outside a civil district meeting the requirements set out in § 57-3-205;

(ii) A majority of a three-member commission which has been set up as provided in § 57-3-108, if a license has been issued within a civil district meeting the requirements set out in § 57-3-205; or

(iii) The mayor or majority of the commission, city council or legislative council of a municipality within which a license has been issued

certifies that any licensee has habitually violated this chapter, or any regulation adopted by the county legislative bodies, three-member commissions, or legislative councils, relative to the conduct and operation of the business provided for in this chapter;

(2) Refuse to issue a license or permit if, upon investigation, the commission finds that the applicant for a license or permit has concealed or misrepresented in writing or otherwise any material fact or circumstance concerning the operation of the business or employment, or if the interest of

the applicant in the operation of the business or employment is not truly stated in the application, or in case of any fraud or false swearing by the applicant touching any matter relating to the operation of the business or employment. If a license or permit has been issued, the commission shall issue a citation to the licensee or permittee to show cause why the license or permit should not be suspended or revoked. All data, written statements, affidavits, evidence or other documents submitted in support of an application are a part of the application;

(3) Summon any applicant for a license or permit and also to summon and examine witnesses, and to administer oaths to such applicants and witnesses in making any investigation in regard thereto;

(4) Make, promulgate, alter, amend, or repeal rules and regulations for the enforcement of this chapter or the collections of all license fees and taxes, and all penalties and forfeitures relating thereto, except that the alcoholic beverage tax authorized to be collected by §§ 57-3-302 and 57-3-303 shall be collected by the commissioner of revenue;

(5) Prescribe all forms of application and licenses and tax stamps, and of all reports and all other papers and documents required to be used under or in the enforcement of this chapter, except that the alcoholic beverage tax authorized to be collected by §§ 57-3-302 and 57-3-303 shall be collected by the commissioner of revenue;

(6) Prevent parts of the premises connected with or in any sense used in connection with the premises, whereon the possession, transportation, delivery, receipt, sale or purchase of alcoholic beverages may be lawful, from being used as a subterfuge, or means of evading the provisions of this chapter or the rules and regulations of the commission;

(7) Conform to, adopt, or coordinate, to the extent that the commission may deem proper, the practices, methods, standards, rules, and regulations governing traffic in alcoholic beverages, and in alcohol, with the rules, practices, standards, and regulations established by the government of the United States, or any officer, bureau or agency thereof;

(8) Require, on licensed premises, the destruction or removal of any and all bottles, whether empty or otherwise, cases, containers, apparatus, or devices, used or likely to be used, designed or intended or employed in evading, violating or preventing the enforcement of this chapter or the rules and regulations of the commission;

(9) Regulate the advertising, signs and displays, posters or designs intended to advertise any alcoholic beverage or the place where the same is sold; and

(10) Refuse to issue or renew a license or permit, or issue a citation in an amount not to exceed one hundred dollars ($100) per violation if, upon investigation, the commission finds that the applicant for a license or permit has not demonstrated the financial capacity to operate the business in a manner consistent with the regulations of the commission or is not generally paying its debts as they come due except for debts as to which there is a bona fide dispute.

History.

Acts 1939, ch. 49, § 4; 1945, ch. 167, § 1; 1947, ch. 73, § 2; 1949, ch. 284, § 2; C. Supp. 1950, § 6648.7; Acts 1951, ch. 52, § 1; impl. am. Acts 1963, ch. 257, §§ 11, 33; impl. am. Acts 1978, ch. 934, §§ 7, 16, 36; T.C.A. (orig. ed.), § 57-109; Acts 1981, ch. 474, § 2; 2003, ch. 90, § 2; 2014, ch. 1015, § 6; 2017, ch. 147, § 2.

Compiler's Notes.

Acts 2003, ch. 90, § 2 directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 3, 4, 6-9, 15, 28.

Law Reviews.

Delegation of Powers to Administrative Agencies in Tennessee (Philip P. Durand), 27 Tenn. L. Rev. 569.

NOTES TO DECISIONS

Analysis

1. Exercise of Powers by Alcoholic Beverage Commission.
2. Rules and Regulations.
3. —Licensing Relatives of Licensee Whose License Is Revoked.
4. —Prohibition of License near Schools or Other Institutions.
5. —Rule for Approval of Additions to Stock.
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7. —Transportation Regulations.
8. —Conflict Between Municipal and State Regulations.
9. Issuance of Licenses.
10. Rights of Permit Holders.
11. Revocation of Licenses.

1. Exercise of Powers by Alcoholic Beverage Commission.

The exercise by the commission of powers under this section will not be lightly interfered with by the courts. McCanless v. Klein, 182 Tenn. 631, 188 S.W.2d 745, 1945 Tenn. LEXIS 262 (1945); Terry v. Evans, 189 Tenn. 345, 225 S.W.2d 255, 1949 Tenn. LEXIS 436 (1949).

Liquor store in municipality without police power to enact or enforce penal ordinances is still subject to state laws including license revocation by commission for violation of rules. Crabtree v. Stephens, 198 Tenn. 149, 278 S.W.2d 672, 1955 Tenn. LEXIS 355 (1955).

2. Rules and Regulations.

It is difficult to conceive of a regulation of the sale and distribution of intoxicating liquor which could be construed to be beyond the police powers of the state. McCanless v. Klein, 182 Tenn. 631, 188 S.W.2d 745, 1945 Tenn. LEXIS 262 (1945); Terry v. Evans, 189 Tenn. 345, 225 S.W.2d 255, 1949 Tenn. LEXIS 436 (1949).

The commission is not authorized to promulgate and enforce regulations which are unreasonable, oppressive or discriminatory. Wise v. McCanless, 183 Tenn. 107, 191 S.W.2d 169, 1945 Tenn. LEXIS 278 (1945).

It is the official duty of the commission to make and promulgate regulations with reference to the retail sale of intoxicating liquors. State ex rel. Brown v. McCanless, 184 Tenn. 83, 195 S.W.2d 619, 1946 Tenn. LEXIS 263 (1946).

The power of the commission under this section to make reasonable rules regulating the issuance of licenses for the retail sale of intoxicating liquors will not be interfered with unless it clearly appears that it has acted arbitrarily or illegally. State ex rel. Brown v. McCanless, 184 Tenn. 83, 195 S.W.2d 619, 1946 Tenn. LEXIS 263 (1946).

3. —Licensing Relatives of Licensee Whose License Is Revoked.

Rule that "no license will be issued to any employee or other person having any interest in the place of business where a license has been revoked, nor will a license be issued to a relative of any employee or other person having any interest in the business for the privilege of doing business near the location of the establishment whose license was revoked," is not too unreasonable to be sustained and is not unenforceable because of the prohibition of the relative doing business "near" the location of the closed establishment. McCanless v. State, 181 Tenn. 308, 181 S.W.2d 154, 1944 Tenn. LEXIS 375, 153 A.L.R. 832 (1944).

4. —Prohibition of License near Schools or Other Institutions.

Regulation forbidding issuance of license where premises occupied by licensee would be in too close proximity to "church, school, or public institution" is reasonable. State ex rel. Brown v. McCanless, 184 Tenn. 83, 195 S.W.2d 619, 1946 Tenn. LEXIS 263 (1946).

Where regulation of commission prohibited issuance of license if premises involved were in too close proximity to a school, the refusal of commission to issue license to liquor store operated within 700 feet of college campus was not arbitrary or unreasonable and was not affected by city ordinance forbidding maintenance of a liquor store within 600 feet of a college campus. State ex rel. Brown v. McCanless, 184 Tenn. 83, 195 S.W.2d 619, 1946 Tenn. LEXIS 263 (1946).

5. —Rule for Approval of Additions to Stock.

A rule that "no wholesale liquor distributor shall add an additional brand to his stock without first securing the written approval of the commission" is valid and does not tend to create a monopoly. McCanless v. Klein, 182 Tenn. 631, 188 S.W.2d 745, 1945 Tenn. LEXIS 262 (1945).

6. —Rule to Prevent Illegal Diversion.

A rule regulating the transportation of whiskey within the state's borders to the end that it may not be diverted and sold in violation of the state statute is a reasonable exercise of administrative authority by the commission. McQueen v. McCanless, 182 Tenn. 453, 187 S.W.2d 630, 1945 Tenn. LEXIS 241 (1945).

7. —Transportation Regulations.

Rule of commission requiring bond and description of cargo before any person can transport alcoholic beverages within, into, through, or from the state of Tennessee issued pursuant to subdivision (c)(2) was a reasonable rule required for proper administration and enforcement of this chapter. McQueen v. McCanless, 182 Tenn. 453, 187 S.W.2d 630, 1945 Tenn. LEXIS 241 (1945).

8. —Conflict Between Municipal and State Regulations.

If there is a conflict between the municipal and state regulations, that impose by the latter will prevail, since by this section the final authority to license the sale of intoxicating liquor is in the commission. State ex rel. Brown v. McCanless, 184 Tenn. 83, 195 S.W.2d 619, 1946 Tenn. LEXIS 263 (1946).

9. Issuance of Licenses.

The licensing authorities are vested with a large discretion in issuing licenses and their decisions will not be interfered with unless it clearly appears that they have acted arbitrarily or unreasonably. State ex rel. Nixon v. McCanless, 176 Tenn. 352, 141 S.W.2d 885, 1939 Tenn. LEXIS 125 (1940).

The refusal of the commission to grant licenses to the wives of men whose licenses had been revoked where it appeared that wives knew nothing about the liquor business and that the business would be dominated by the husbands was not an abuse of discretion. State ex rel. Nixon v. McCanless, 176 Tenn. 352, 141 S.W.2d 885, 1939 Tenn. LEXIS 125 (1940).

Commission is authorized to make reasonable rules regulating retail sales of intoxicating liquor and is vested with a large discretion in determining whether a license applied for shall be issued. State ex rel. Brown v. McCanless, 184 Tenn. 83, 195 S.W.2d 619, 1946 Tenn. LEXIS 263 (1946).

An incorporated town of over 1,000, is a municipality under this section with power to license operation of liquor store in its boundaries, even though it does not have police power to enact or enforce penal ordinances. Crabtree v. Stephens, 198 Tenn. 149, 278 S.W.2d 672, 1955 Tenn. LEXIS 355 (1955).

The alcoholic beverage commission could grant a liquor license although the city had refused to issue a certificate of good moral character. Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

10. Rights of Permit Holders.

Assuming that he is without fault, the holder of a permit issued by the express authority of a legislative act is the holder of a lawfully conferred privilege in the exercise of which he is entitled to protection for the period of his permit. Wise v. McCanless, 183 Tenn. 107, 191 S.W.2d 169, 1945 Tenn. LEXIS 278 (1945).

The right of a duly licensed dealer to protest an unreasonable, oppressive or discriminatory regulation does not rest on a fundamental property right, but on a privilege expressly conferred by the state, acting through the legislature, and the permission thus given for a fixed term may not be so unreasonably regulated, in the exercise by the commission of the powers delegated to it, as to destroy this permit altogether. Wise v. McCanless, 183 Tenn. 107, 191 S.W.2d 169, 1945 Tenn. LEXIS 278 (1945).

Although under this section a dealer has no "property right" in his license, such civil right as he does have under the permit issued to him by the express authority of the statute may be protected against invasion by the operation of a regulation unreasonable and oppressive in its application to him. Wise v. McCanless, 183 Tenn. 107, 191 S.W.2d 169, 1945 Tenn. LEXIS 278 (1945).

Where after issuance of license to complainant commission promulgated a regulation prohibiting operation of a liquor store within 100 feet of any place where the public was admitted and liquor consumed, complainant whose liquor store was within 100 feet of such a place and who had no control over such place was entitled to enjoin enforcement of such regulation during the period for which his license was issued. Wise v. McCanless, 183 Tenn. 107, 191 S.W.2d 169, 1945 Tenn. LEXIS 278 (1945).

11. Revocation of Licenses.

Failure of wholesaler to reveal interest in retail liquor business was ground for revocation of license. Bluff City Beverage Co. v. MacFarland, 208 Tenn. 340, 345 S.W.2d 896, 1961 Tenn. LEXIS 292 (1961).

57-3-105. Conflicts of interest prohibited.

No member of the commission and no person employed by the commission shall have any interest, direct or indirect, either proprietary or by means of any loan, mortgage or lien, or in any other manner, in or on any premises where alcoholic beverages are sold; nor shall they or any of them have any interest, direct or indirect, in any business wholly or partially devoted to the sale, transportation or storage of alcoholic beverages.

History. Acts 1939, ch. 49, § 5; C. Supp. 1950, § 6648.16 (Williams, § 6648.8); impl. am. Acts 1963, ch. 257, § 15; T.C.A. (orig. ed.), § 57-110.

57-3-106. Local option election — Municipalities where applicable — Supplemental voter registration — Restrictions on frequency of elections.

(a)(1) Except as provided in subsection (g), the voters of any county may, by local option election, permit the manufacture, receipt, sale, storage, transportation, distribution and possession of alcoholic beverages, within the territorial limits of such county, by a majority vote, at an election held as hereinafter provided, and, in the event of such permission, the manufacture, receipt, sale, storage, transportation, distribution and possession of alcoholic beverages in such county are lawful; provided, that sales at retail as herein defined shall be made only in the municipalities in such county as herein defined, or within a civil district of such county, which district shall have a population of thirty thousand (30,000) persons or over, according to the federal census for the year 1950 or any subsequent census, but which civil district shall not have lying either wholly or partly within its boundaries a municipality as herein defined.

(2) In like manner, the voters of any county, at any time while this chapter is in effect, may, by local option election, forbid the manufacture, receipt, sale, storage, transportation, distribution and/or possession of alcoholic or intoxicating beverages, within the territorial limits of such county, by a majority vote, at an election to be held as hereinafter provided, and, in the event of such prohibition, the manufacture, receipt, sale, storage, transportation, distribution and/or possession of alcoholic or intoxicating beverages in such county is unlawful; provided, that this does not apply to a bona fide manufacturer, actually engaged in manufacture under this chapter.

(b)(1) Except in counties having populations of:

not less than	nor more than
12,100	12,200
23,500	24,000
65,000	70,000

according to the 1970 federal census or any subsequent federal census, the voters of any municipality in this state which has been incorporated under a general or special law or laws of this state for five (5) years or longer and which has a population of nine hundred twenty-five (925) or more persons, according to the federal census of 1970 or any subsequent federal census,

except in municipalities with a population of not less than one thousand two hundred thirty (1,230) nor more than one thousand two hundred fifty (1,250), according to the 1970 federal census or any subsequent federal census, in any county having a population of not less than thirteen thousand five hundred (13,500) nor more than thirteen thousand six hundred (13,600), according to the 1970 federal census or any subsequent federal census, may, by local option election, permit the manufacture, receipt, sale, storage, transportation, distribution and/or possession of alcoholic beverages within the territorial limits of such municipality by a majority vote, at an election held as hereinafter provided, and in the event of such permission, the manufacture, receipt, sale, storage, transportation, distribution and/or possession of alcoholic beverages in such municipality shall be, and become lawful, notwithstanding the fact that the county or any portion thereof in which such municipality is located has, or has not, voted to the contrary under any other provision of this chapter, and the same shall continue to be lawful until the same is forbidden by the voters of such municipality, by majority vote thereof, at a local option election held as hereinafter provided.

(2) In like manner, the voters of any such municipality, at any time while this chapter is in effect, may, by local option election, forbid the manufacture, receipt, sale, storage, transportation, distribution, and/or possession of alcoholic or intoxicating beverages, within the territorial limits of the municipality, by a majority vote, at an election to be held as hereinafter provided, and in the event of such prohibition, the manufacture, receipt, sale, storage, transportation, distribution, and/or possession of alcoholic or intoxicating beverages in the municipality is unlawful, notwithstanding the fact that the county or any portion thereof in which the municipality is located has or has not voted to the contrary under any other provision of this chapter; provided, that this does not apply to a bona fide manufacturer, actually engaged in manufacture under any law of this state.

(c)(1) Elections provided for in subsections (a) and (b) shall be called and held as elections on questions by the county election commission at the next regular election of the county or municipality, as the case may be, upon receipt of a petition signed by residents of the county or municipality, as the case may be, to a number amounting to ten percent (10%) or more of the votes cast in the county or municipality, as the case may be, for governor of the state of Tennessee at the then last preceding gubernatorial election, requesting the holding of such election. Except that, no election under this chapter may be placed on the same ballot or conducted on the same day of a primary election.

(2) Such petition shall be addressed to the county election commission of such county, or county in which such municipality is located, and shall read, except for such address, substantially as follows:

> We, registered voters of _____ (here insert name of county or municipality, as the case may be), do hereby request the holding of a local option election to authorize retail package stores to sell alcoholic beverages as provided by law.

(3) Such petition may be in two (2) or more counterparts.

(d) Registered voters of the county or municipality, as the case may be, may vote in the election. Ballots shall be in the form prescribed by the general

election laws of the state, except as herein otherwise provided.

(1) The questions submitted to the voters appearing thereon in county elections shall be in the following form:

To permit retail package stores to sell alcoholic beverages in _____ (Here insert name of county)

Not to permit retail package stores to sell alcoholic beverages in _____ (Here insert name of county)

(2) The questions submitted to the voters appearing thereon in municipal elections shall be in the following form:

To permit retail package stores to sell alcoholic beverages in _____ (Here insert name of municipality)

Not to permit retail package stores to sell alcoholic beverages in _____ (Here insert name of municipality)

(e) In county elections, the county election commission shall hold a prior supplemental registration, unless such election be at the time of a general election, such registration to be held at the time and in the manner prescribed by law for the holding of supplemental registration previous to the election for members of the general assembly.

(f)(1) The county election commission shall certify the results of the election to the county mayor in county elections and to the mayor of the municipality in municipal elections.

(2) Not more than one (1) election in any such county or municipality shall be held under this chapter within any period of twenty-four (24) months, except that no election in an entire county or any portion thereof in which such municipality is located, held under this chapter, is an election held in such municipality within the meaning of this subdivision (f)(2).

(3) Should any county or municipality thereof conduct a local option election under this chapter in conjunction with any general election, and the number of qualified votes cast negative to the local option proposition exceeds sixty percent (60%) of the total number of votes cast in the election, no further local option election in such county or municipality shall be held for a period of four (4) years from the date of such previous election. However, no election in an entire county or any portion thereof in which such municipality is located, held under this chapter, is an election held in such municipality within the meaning of this provision.

(g)(1) In those counties wherein are located municipalities which have a population equal to or greater than the smallest county in Tennessee by the federal census of 1960 or by any succeeding federal census, or any municipality having a population of one thousand seven hundred (1,700) or more persons, according to the 1960 federal census in which at least fifty percent (50%) of assessed valuation of the real estate in the municipality consists of hotels, motels, and tourist courts and accommodations, as shown by the tax assessment rolls or books of the municipality, the elections provided for in subsection (a) apply only to those portions of such county lying outside the corporate limits of such municipalities, it being the purpose and intent of this chapter that as to such counties no countywide election may be held in, nor shall its result affect, any such municipality, but whether or not the manufacture, receipt, sale, storage, distribution, transportation and/or pos-

session of alcoholic beverages shall be permitted or prohibited within the corporate limits of such municipalities shall be determined solely by separate local option elections held in each municipality as provided by subsection (b) hereof; provided, that in such counties wherein the manufacture, storage, sale, distribution, transportation, and/or possession of alcoholic beverages was legal on May 10, 1967, nothing herein shall affect the legality thereof in such counties and the municipalities thereof until the same shall be prohibited by separate local option elections held as provided in this section.

(2) Elections may be called and held in such portions of such counties lying outside such municipalities in the same manner as is provided by subsection (a) for an entire county and with like effect, except that the results thereof shall be applicable only to those portions of such counties lying without the corporate limits of such municipalities. Petitioners for such elections and the voters participating therein shall reside within those portions of the county lying outside the corporate limits of such municipalities and shall be otherwise qualified as provided in this section. Where a majority of the voters participating in such election shall permit the manufacture, receipt, sale, storage, distribution, transportation and/or possession of alcoholic beverages within such portions of such counties, the same shall be and become lawful therein, but sales at retail shall be made only in such portions of such counties as are within the corporate limits of municipalities as the same are defined in § 57-3-101, except this subsection (g) shall likewise apply to any civil district which falls within subsection (a) and § 57-3-205.

(3) Not more than one (1) such election shall be held in such portions of any county lying without the corporate limits of such municipalities within any period of twenty-four (24) months.

(4) Should any portion of any county lying without the corporate limits of such municipalities conduct a local option election under the provisions of this chapter in conjunction with any general election, and the number of qualified votes cast negative to the local option proposition exceeds sixty percent (60%) of the total number of votes cast in the election, no further local option election in such portions of any county lying without the corporate limits of such municipalities shall be held for a period of four (4) years from the date of such previous election. However, no election in any such portion of a county, held under this chapter, is an election held in such municipalities within the meaning of this subdivision (g)(4).

(h) When a municipality is located partly within a county that has a metropolitan form of government and the county has authorized retail package stores to sell alcoholic beverages and partly within another county that has not authorized retail package stores to sell alcoholic beverages, a referendum in the municipality shall be held only in that portion of the municipality located in the county that has not authorized retail package stores to sell alcoholic beverages. The referendum result shall not affect the sale of alcoholic beverages by retail package stores in the portion of the municipality located in the county having a metropolitan form of government.

(i) If any municipality located in any county having a population of not less than twenty-nine thousand four hundred (29,400) nor more than twenty-nine

thousand five hundred (29,500), according to the 2010 federal census or any subsequent federal census, has authorized the sale of alcoholic beverages for consumption on the premises in a referendum in the manner prescribed by this section, then any municipality having a population of not less than five hundred thirty (530) nor more than five hundred thirty-nine (539), according to the 2010 federal census or any subsequent federal census, located within the boundaries of such county, may conduct a referendum to authorize the sale of alcoholic beverages at retail within the corporate boundaries of such municipality, notwithstanding the population requirements of § 57-3-101(a)(14) or subdivision (b)(1). The referendum shall be conducted in the manner prescribed by this section.

(j) If any municipality located in any county having a population of not less than forty-one thousand eight hundred (41,800) nor more than forty-one thousand nine hundred (41,900), according to the 2010 federal census or any subsequent federal census, has authorized the sale of alcoholic beverages for consumption on the premises in a referendum in the manner prescribed by this section, then any municipality having a population of not less than four hundred sixty (460) nor more than four hundred seventy (470), according to the 2010 federal census or any subsequent federal census, located within the boundaries of such county, may conduct a referendum to authorize the sale of alcoholic beverages at retail within the corporate boundaries of such municipality, notwithstanding the population requirements of § 57-3-101(a)(14) or subdivision (b)(1). The referendum must be conducted in the manner prescribed by this section.

(k) If any municipality located in any county having a population of not less than sixty-six thousand two hundred (66,200) nor more than sixty-six thousand three hundred (66,300), according to the 2010 federal census or any subsequent federal census, has authorized the sale of alcoholic beverages for consumption on the premises in a referendum in the manner prescribed by this section, then any municipality having a population of not less than three hundred ten (310) nor more than three hundred nineteen (319), according to the 2010 federal census or any subsequent federal census, located within the boundaries of such county, may conduct a referendum to authorize the sale of alcoholic beverages at retail within the corporate boundaries of such municipality, notwithstanding the population requirements of § 57-3-101(a)(14) or subdivision (b)(1). The referendum must be conducted in the manner prescribed by this section.

(*l*)(1) Notwithstanding subsection (a), in any county that has approved the sale at retail of alcoholic beverages, retail sales may be made within the boundaries of any property under the control of a property owners association that:

(A) Includes at least four thousand (4,000) homes;

(B) Contains three (3) golf courses, a country club, and a yacht club;

(C) Is managed by a 501(c) nonprofit corporation;

(D) Has more than one hundred (100) miles of roads maintained by the property owners association;

(E) Has a volunteer fire department;

(F) Has more than one hundred (100) people employed by the property owners association;

(G) Has a utility system maintained by the property owners association;

(H) Is located on the banks of Tellico Reservoir; and

(I) Is located in any county having a population not less than forty-eight thousand five hundred (48,500) and not more than forty-eight thousand six hundred (48,600), according to the 2010 federal census or any subsequent federal census.

(2) Notwithstanding any other law to the contrary, the commission may issue a retailer's license to any 501(c) nonprofit corporation described in subdivision (*l*)(1)(C) if such nonprofit corporation approves having a retail licensee within the boundaries of its property upon a majority vote of the board for such nonprofit corporation.

History.

Acts 1939, ch. 49, § 16; C. Supp. 1950, § 6648.8 (Williams, § 6648.19); Acts 1951, ch. 52, § 6; impl. am. Acts 1951, ch. 75, § 1; impl. am. Acts 1953, ch. 88, § 1; Acts 1963, ch. 390, § 1; 1967, ch. 215, § 1; 1971, ch. 70, § 8; 1972, ch. 502, § 1; 1972, ch. 612, § 8; 1972, ch. 640, § 1; 1972, ch. 740, § 4; impl. am. Acts 1972, ch. 740, § 7; Acts 1975, ch. 112, §§ 1, 2; 1975, ch. 358, § 1; 1977, ch. 174, §§ 1, 2; 1978, ch. 627, § 1; impl. am. Acts 1978, ch. 934, §§ 21, 36; T.C.A. (orig. ed.), § 57-111; Acts 1981, ch. 381, §§ 1-3; 1982, ch. 551, §§ 1-5; 1992, ch. 711, § 2; 2003, ch. 90, § 2; 2011, ch. 116, § 1; 2015, ch. 201, § 1; 2018, ch. 692, § 1; 2018, ch. 891, § 1; 2018, ch. 1027, § 2.

Compiler's Notes.

For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13. and its supplement.

Acts 2003, ch. 90, § 2 directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

Amendments.

The 2018 amendment by ch. 692 added (j).

The 2018 amendment by ch. 891 added (k).

The 2018 amendment by ch. 1027 added (*l*).

Effective Dates.

Acts 2018, ch. 692 § 3. April 9, 2018.

Acts 2018, ch. 891, § 3. May 3, 2018.

Acts 2018, ch. 1027, § 3. May 21, 2018.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 6, 28.

Attorney General Opinions.

Because a county previously approved liquor-by-the-drink sales through a county-wide referendum, this referendum made such sales legal within a city meeting the definition of a municipality under T.C.A. § 57-3-101; further, the exclusion of certain municipalities from the effects of a county-wide referendum as described in T.C.A. § 57-3-106(g)(1) did not apply to the city because its population is, and always has been, smaller than the least populous county according to the 1960 and subsequent censuses, OAG 02-092 (8/28/02).

Even though sales of liquor by the drink were legal in a city, as a result of a previous county referendum, the voters of the city could, through a referendum, prohibit such sales, OAG 02-092 (8/28/02).

Participation of the municipality as a whole is required in a referendum to approve liquor by the drink, OAG 06-113 (7/19/06).

Consumption of alcoholic beverages on the premises in unincorporated areas of a county, OAG 09-011 (2/3/09).

Constitutionality of rule limiting advertising of alcoholic beverages. OAG 13-46, 2013 Tenn. AG LEXIS 46 (6/17/2013).

NOTES TO DECISIONS

Analysis

1. Decrease in Population Subsequent to Election.
2. Returns of Election Commission.
3. Function of County Mayor.
4. Fraudulent Election.
5. Suit by County Mayor to Reform Election.
6. Mandamus Against Election Commission.
7. Municipal Ordinances.

1. Decrease in Population Subsequent to Election.

Where the population of a town when liquor license was issued was more than 1,000 at the time it was granted, subsequent decrease of population of the town below 1,000 did not operate to invalidate the license. O'Neil v. State

ex rel. Baker, 185 Tenn. 534, 206 S.W.2d 780, 1947 Tenn. LEXIS 354 (1947).

2. Returns of Election Commission.

The returns by the election commission are quasi records, and stand with all force of presumptive regularity and prima facie integrity, not only till suspicion is cast upon them, but until their self-authenticated verity is overcome by affirmative proof that the returns do not speak the truth. Seeber v. Watlington, 192 Tenn. 521, 241 S.W.2d 553, 1951 Tenn. LEXIS 298 (1951).

3. Function of County Mayor.

The county executive (now county mayor), as the recipient of the returns under this section, acts merely in a ministerial capacity as the act which the county executive (now county mayor) performs is done without the exercise of discretion or judgment and it is only to lodge the official returns of the election commission. Seeber v. Watlington, 192 Tenn. 521, 241 S.W.2d 553, 1951 Tenn. LEXIS 298 (1951).

4. Fraudulent Election.

Where complainant contended that his property right in his liquor business was jeopardized by a fraudulent local option election, complainant was entitled to maintain bill in chancery, but injunction restraining election commission from canvassing votes and announcing result of election was improper as being premature. O'Neil v. Jones, 185 Tenn. 539, 206 S.W.2d 782, 1947 Tenn. LEXIS 355, 1 A.L.R.2d 581 (1947).

5. Suit by County Mayor to Reform Election.

County executive (now county mayor) is not entitled to file an action against election commission to reform election returns since he is merely charged with reception of returns and has no authority statutory or otherwise to bring such an action. Seeber v. Watlington, 192 Tenn. 521, 241 S.W.2d 553, 1951 Tenn. LEXIS 298 (1951).

Suit by county mayor against county election commission to reform local option election returns certified to him by election commission on the ground of fraud was not an election contest. Seeber v. Watlington, 192 Tenn. 521, 241 S.W.2d 553, 1951 Tenn. LEXIS 298 (1951).

6. Mandamus Against Election Commission.

Election commission which rejected returns in two precincts for insufficient legal reasons could be mandated to reassemble all returns including the ones rejected. Peeler v. State, 190 Tenn. 615, 231 S.W.2d 321, 1950 Tenn. LEXIS 528 (1950).

7. Municipal Ordinances.

A municipal ordinance prohibiting the sale of and trafficking in alcoholic beverages within the corporate limits was in conflict with the requuirement that the sale of alcoholic beverage be permitted or prohibited on a countywide basis. Lakewood v. Tennessee Alcoholic Beverage Com., 219 Tenn. 510, 410 S.W.2d 897, 1967 Tenn. LEXIS 452 (1967).

An ordinance is unreasonable if it is so restrictive with respect to permissible locations of liquor stores that it conflicts with the legislative purpose that such stores be fairly distributed throughout the city. Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

57-3-107. Counties in which no election held — Counties voting against local option — Effect — Transportation of intoxicating liquors through dry counties.

(a) In the several counties, or portions thereof, and in the several municipalities wherein separate local option election may be held under the provisions hereof, in which no local option election is held, or, if held, a majority of votes cast therein are against local option, then as to that county or portion thereof, or municipality, nothing in this chapter shall be so construed as to modify in any respect the statutes now in force relating to the manufacture, sale, transportation, and/or possession of intoxicating liquors, but the same shall remain in full force and effect.

(b) It shall be lawful to transport alcoholic beverages through such counties in which no local option election is held, or if the election is held and the majority of votes cast therein are against local option, if, in either such case, such beverages are in sealed bottles or containers, and are moving from a duly licensed manufacturer to a licensed wholesaler, or from a wholesaler to a licensed retailer, and such shipment is accompanied by a bill of lading or other instrument in writing showing the destination of such alcoholic beverages.

(c) Whenever any county or municipality wherein traffic in alcoholic beverages has been legalized, shall, by a majority vote in a local option election held as set out herein, prohibit such traffic, all licensed dealers in such county or municipality shall have ninety (90) days from the final determination of the results of the election to dispose of their stocks of alcoholic beverages and wind up their businesses.

History.
Acts 1939, ch. 49, § 17; C. Supp. 1950, § 6648.9 (Williams, § 6648.20); Acts 1951, ch. 138, § 2; 1967, ch. 215, § 2; modified; T.C.A. (orig. ed.), § 57-112.

Textbooks.
Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 6.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Implied Exceptions.
3. Transportation Between Wholesalers.

1. Constitutionality.
This section is not unconstitutional as creating an arbitrary and unreasonable discrimination in favor of, or against, citizens of particular counties of the state. Akers v. State, 175 Tenn. 674, 137 S.W.2d 281, 1939 Tenn. LEXIS 91 (1940).

2. Implied Exceptions.
The courts will not by implication add another exception to those contained in this section since the enumeration of specific exceptions to a general law will be construed to exclude all other exceptions. In re A-1 Liquor Distributors, Inc., 37 Tenn. App. 661, 269 S.W.2d 785, 1953 Tenn. App. LEXIS 119 (Tenn. Ct. App. 1953).

3. Transportation Between Wholesalers.
There is no statutory exception to the general rule that liquor may not be transported in a dry county which would permit one wholesale corporation to send a shipment of liquor through a dry county to another wholesale corporation by way of gift, exchange or sale. In re A-1 Liquor Distributors, Inc., 37 Tenn. App. 661, 269 S.W.2d 785, 1953 Tenn. App. LEXIS 119 (Tenn. Ct. App. 1953).

Although all capital stock of a wholesale liquor company was owned by a second wholesale liquor company, such corporations were separate legal entities and transportation between them through a dry county was illegal. In re A-1 Liquor Distributors, Inc., 37 Tenn. App. 661, 269 S.W.2d 785, 1953 Tenn. App. LEXIS 119 (Tenn. Ct. App. 1953).

57-3-108. District commissions — Members — Appointment — Term of office — Qualifications — Vacancies — Service without compensation.

(a) Whenever any civil district of any county of the state shall by virtue of § 57-3-205 meet the requisites for the licensing of retail liquor stores to be located within such district the secretary of state, state treasurer and comptroller of the treasury, or a majority of them, shall appoint a three-member commission composed of citizens and residents of the civil district involved, which commission shall be vested with all the powers and duties with respect to the sale of alcoholic beverages within such district which may under state law be vested in the mayor and/or board of aldermen of a municipality of the state, including the right to limit the number of such stores and to limit the permissible locations within such district where such stores may be situated.

(b) Members of such commission shall serve until the next biennial election in August occurring more than thirty (30) days after such civil district shall be brought within the requirements of this chapter for the sale of alcoholic beverages at retail, at which time their successors shall be elected.

(c) The qualifications required of a member of such commission shall be the

same as those for the magistrates of such district, and the qualifications of those entitled to vote for such commissioners shall be the same as those required for voters for the office of magistrate of such district.

(d) The term of office of all the members of the commission shall be for two (2) years, or until their successors are duly elected and take office. All vacancies on the commission shall be filled by the appointment of the secretary of state, state treasurer and comptroller of the treasury, or a majority of them, and such appointment shall be for the unexpired term of the member whose vacancy is being filled.

(e) The members of the commission shall serve without compensation and shall have no interest, financial or otherwise, in any retail or wholesale liquor store or distillery.

(f) In the event the terms of office of the members of the commission shall have expired, that is, that they shall have served the two (2) years for which they were originally elected, and as many as one (1) biennial election has been held without the voters having an opportunity to elect the members of the commission because no names were printed on the ballot, then the terms of the members of the commission shall be automatically terminated and a new commission shall be designated with all the rights and powers attaching to the commission herein. In such event the members of the commission shall be appointed by a board composed of the secretary of state, state treasurer and comptroller of the treasury in the same case as otherwise provided for filling vacancies.

History.

Acts 1939, ch. 49, § 9a, as added by Acts 1951, ch. 52, § 4 (Williams, § 6648.12a1); 1955, ch. 244, § 1; T.C.A. (orig. ed.), § 57-113.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 6, 8.

NOTES TO DECISIONS

1. General Services District.

Under the express definition of T.C.A. § 57-3-205, the general services district standing alone is not a civil district within any category which would entitle it to the appointment of a commission under T.C.A. § 57-3-109 to determine whether an individual should be granted a retail liquor license. Templeton v. Metropolitan Government of Nashville & Davidson County, 650 S.W.2d 743, 1983 Tenn. App. LEXIS 699 (Tenn. Ct. App. 1983).

57-3-109. Damaged or unaccepted goods — Liability for tax.

When any common carrier transporting alcoholic beverages to a point within this state, or any insurance company insuring such alcoholic beverages, comes into possession of such alcoholic beverages by virtue of the same being damaged or otherwise unaccepted by the consignee of such alcoholic beverages, such common carrier or insurance company shall become liable for the tax imposed under this chapter, unless proof deemed satisfactory to the commissioner of revenue is furnished to the commissioner by such carrier or insurer showing that such alcoholic beverages have been destroyed or shipped to a point without this state and, therefore, have not been sold or consumed in this state.

History.
Acts 1971, ch. 150, § 1; T.C.A., § 57-169.

57-3-110. Sale of liquors to armed forces agencies.

(a) Any wholesaler, manufacturer, or distiller may sell intoxicating liquors to any post exchange, ship's service store, mess, club, or commissary of any post, camp, station or reservation of the armed forces, or any other agency authorized by the department of defense to engage in the sale of intoxicating liquors.

(b) Before any person shall transport (other than by common carrier) alcoholic beverages within, into, or through this state, for delivery to any such ship's service store, mess, club, commissary, or other agency under the jurisdiction of the department of defense, such person shall comply with § 57-3-403, and any other law applicable to the transporting of alcoholic beverages, and shall, in addition thereto, procure from the alcoholic beverage commission a special permit in such form as may be prescribed by the commission, which application, among other things, shall state the name and location of the post exchange, ship's service store, mess, club, commissary, or other agency to which the delivery will be made, the route over which such shipment will be hauled, and the amount to be transported according to the separate containers making up such shipment.

(c) Before any common carrier shall transport alcoholic beverages within, into or through this state for delivery to a post exchange, ship's service store, mess, commissary, club or other agency under the jurisdiction of the department of defense, notice of such shipment shall be given to the alcoholic beverage commission, which notice shall include, among other things, the name and location of the consignee, the route over which such shipment will be transported, and the amount to be transported according to the separate containers making up such shipment.

(d) It is herein declared to be the legislative intent to permit the sale of alcoholic beverages to post exchanges and similar agencies under the jurisdiction of the department of defense on military or naval reservations and posts within the boundaries of this state by wholesalers, manufacturers, and distilleries only upon strict compliance with this section, § 57-3-403 and all other sections applicable to the transportation of alcoholic beverages within, into, or through this state.

History.
Acts 1955, ch. 347, § 1; impl. am. Acts 1959, ch. 9, § 14; impl. am. Acts 1963, ch. 257, § 49; T.C.A., § 57-151.

57-3-111. Appropriation for enforcement of law.

There is appropriated from state license and permit fees a sum sufficient for the salaries, cost, expenses, operation and enforcement of this chapter, subject to an allotment by the commissioner of finance and administration, with the approval of the governor, but in no event shall the allotment made by the commissioner exceed the amount of fees collected under this chapter.

History.
Acts 1939, ch. 49, § 9b, as added by Acts 1949, ch. 284, § 5; C. Supp. 1950, § 6648.14b (Williams, § 6648.12b); impl. am. Acts 1959,

ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; T.C.A. (orig. ed.), § 57-149.

57-3-112. Partial invalidity of law — Operation and effect.

If the referendum election provisions of this chapter, or any part thereof, as contained in § 57-3-106 or elsewhere, be held unconstitutional, or invalid, void, or ineffective, for any reason, in whole or in part, this chapter must fail as such provisions shall not be severable, and no part of this chapter would have been passed without such provisions being contained therein as valid provisions.

History.
Acts 1939, ch. 49, § 18; C. Supp. 1950, § 6648.23 (Williams, § 6648.21); modified; T.C.A. (orig. ed.), § 57-150.

NOTES TO DECISIONS

1. Effect of Section.
This section, in as many words, makes the referendum election provisions, and all parts thereof, inseparable parts of the statute. Akers v. State, 175 Tenn. 674, 137 S.W.2d 281, 1939 Tenn. LEXIS 91 (1940).

PART 2

LICENSES AND FEES

57-3-201. License classifications.

The alcoholic beverage commission may issue, under this chapter, the following classes of licenses, in relation to alcoholic spirituous beverages exclusively, which shall consist of the following classes only:

(1) Manufacturer's or distiller's or rectifier's license;
(2) Liquor wholesaler's license;
(3) Liquor retailer's license;
(4) Winery license;
(5) Direct shipper's license;
(6) Alcoholic beverage collector's license;
(7) Winemaking on premises facility license;
(8) Farm wine permit; and
(9) Wine at retail food store license.

History.
Acts 1939, ch. 49, § 5; mod. C. Supp. 1950, § 6648.10 (Williams, § 6648.8); modified; impl. am. Acts 1963, ch. 257, § 17; T.C.A. (orig. ed.), § 57-114; Acts 2009, ch. 348, § 2; 2009, ch. 484, § 2; 2011, ch. 451, § 1; 2012, ch. 691, § 2; 2014, ch. 554, § 5.

Compiler's Notes.
For the Preamble to the act regarding allowing an in-state or out-of-state entity to ship wine directly to consumers age 21 years or older in this state for personal use, please refer to Acts 2009, ch. 348.

Cross-References.
Municipal inspection fees, title 57, ch. 3, part 5.

57-3-202. Manufacturer's or distiller's licenses — Qualifications of applicants — Fees — Permits to solicit orders — Penalty — Rules and regulations.

(a) A manufacturer's or distiller's license may be issued, as hereinafter provided, for the manufacturing of alcoholic spirituous beverages or vintage alcoholic beverages. Any person, firm, or corporation desiring to manufacture for commercial purposes any alcoholic spirituous beverages or vintage alcoholic beverages shall make application to the commission for a license to manufacture the same, which application shall be in writing and verified, on the forms herein authorized, to be prescribed and furnished; and, thereupon, the commission may grant such license, subject to this chapter.

(b) All applicants if individuals must be citizens of the United States, and all stockholders of any corporate licensee must likewise be citizens of the United States.

(c) Such license shall not be issued unless and until there be paid to the commission a separate license fee of one thousand dollars ($1,000).

(d) Before an individual owner, officer, employee, or representative of any manufacturer, rectifier, or importer may solicit orders from a licensed wholesaler in this state, such individual owner, officer, employee, or representative shall be the holder of a permit issued by the commission. The fee for such permit shall be fifty dollars ($50.00). Such permit shall authorize the holder to solicit orders upon the premises of a licensed wholesaler. A representative may sell the products of, or represent more than one (1) manufacturer, rectifier, or importer and such affiliates or subsidiaries that the manufacturer, rectifier, or importer may control by means of ownership or the ownership of a controlling stock interest.

(e) "Vintage alcoholic beverages," as used in this section, means all wine sold by wholesalers licensed under § 57-3-203.

(f)(1) A manufacturer's license may be issued to a person, firm or corporation for the limited purpose of blending nonalcoholic products with alcoholic beverages on premises, either on its own behalf or on behalf of other entities pursuant to contract.

(2) A licensee under this subsection (f) may obtain the alcoholic beverages for use in its blending operations from any entity holding a license or permit issued under this section, §§ 57-2-104, 57-3-203, and part 6 of this chapter.

(3) A license may be issued to a manufacturer, under this subsection (f), notwithstanding the requirements of § 57-3-106.

(4) A manufacturer, licensed under this subsection (f) for the limited purpose of blending, may sell, distribute or transport the product produced from its blending operations in accordance with this title.

(g) Notwithstanding subsection (f), an establishment licensed to sell alcoholic beverages for on-premises consumption pursuant to chapter 4, part 1 of this title, may, without a manufacturer's license, produce, store and sell infused products pursuant to § 57-4-108.

(h) The commission is empowered to make such regulations, investigations and audits as it may deem necessary for enforcing and preventing violations of this chapter.

(i)(1) A manufacturer's license issued or renewed under this section to a manufacturer shall also allow such manufacturer to sell at retail on the licensed premises of the manufacturer products that are manufactured on the manufacturer's premises; provided, that no more than five gallons (5 gal.) or one-sixth (⅙) of a barrel of its products may be sold to any one (1) individual per visit to the premises. The manufacturer may serve samples of the product manufactured or distilled at the premises to any person of legal drinking age with or without cost or may include such samples as part of a tour of the manufacturer's or distiller's premises available to the public with or without cost. Such samples may be made available at any location on the manufacturing premises permitted by federal law. The manufacturer shall disclose to the commission the location where samples are available. The hours of sale for the manufacturer to sell products at retail shall be between the hours of eight o'clock a.m. (8:00 a.m.) and eleven o'clock p.m (11:00 p.m) on Monday through Saturday and between the hours of twelve o'clock (12:00) noon and seven o'clock p.m. (7:00 p.m.) on Sunday.

(2) A manufacturer electing to exercise the rights granted to it under subdivision (i)(1), may only sell at retail or provide samples of product that it has obtained from a wholesaler licensed under § 57-3-203, and such wholesaler shall remit all taxes imposed under §§ 57-3-302, 57-3-501 (which shall be collected from the manufacturer based upon its retail sales), and 57-6-201. For products acquired from a wholesaler by a manufacturer under this section, the wholesaler may permit the manufacturer to deliver its products to the location on its premises where such retail sales and samples will be effected, provided the wholesaler permitting such direct shipment must include the amounts delivered in its inventory and depletions for purposes of tax collections.

(3) Notwithstanding any law to the contrary, any manufacturer selling at retail with the license authorized by this subsection (i) shall pay a municipal inspection fee, described in § 57-3-501, if a municipality the manufacturer is located in imposes such inspection fee which shall then be remitted by the wholesaler as described in subdivision (i)(2).

(4)(A) A distiller's license issued or renewed under this section authorizes a distillery to sell to any person of legal drinking age alcoholic beverages for consumption on the premises of the distillery, other than the bonded premises, where such consumption is also permitted by federal law. Distilled spirits sold under this subdivision (i)(4) must be manufactured on the premises of the distillery.

(B) As used in subdivision (i)(4)(A), "premises," for purposes of consumption on the premises:

(i) Means any and all of the real property owned or leased by a distillery upon which the distillery is operated, including any real property owned by the distillery contiguous thereto; and

(ii) Does not mean the bonded premises of a distillery.

(5) Samples served and alcoholic beverages sold for consumption on the premises of a distillery in accordance with this subsection (i) are not subject to the tax imposed by § 57-4-301(c).

(j)(1) Any nonprofit association organized to encourage and support the manufacture of alcoholic beverages with three (3) or more manufacturers

licensed under this section or non-manufacturer non-resident sellers licensed under § 57-3-602(c) as members shall be allowed to hold not more than fifteen (15) alcoholic beverage festivals per calendar year. Each festival shall not exceed a period of seventy-two (72) hours.

(2) Any manufacturer licensed under this section or non-manufacturer non-resident seller licensed under § 57-3-602(c) participating in a festival authorized by this subsection (j) shall be allowed to transport, serve and offer complimentary samples of any alcoholic beverage lawfully manufactured by the manufacturer or on behalf of the non-manufacturer non-resident seller pursuant to § 57-3-602(c) for tasting at the festival.

(3) Any manufacturer licensed under this section or non-manufacturer non-resident seller licensed under § 57-3-602(c) participating in a festival authorized by this subsection (j) shall be allowed to transport alcoholic beverages produced by that manufacturer or on behalf of that non-manufacturer non-resident seller to sell at the festival for consumption off-premises.

(4)(A) Any nonprofit association authorized by this subsection (j) to hold an alcoholic beverage festival shall apply for a special occasion license as defined in § 57-4-102, in order for participating manufacturers licensed under this section or non-manufacturer non-resident sellers licensed under § 57-3-602(c) to serve complimentary samples as described in subdivision (j)(2) and to sell alcoholic beverages produced by the manufacturers or on behalf of the non-manufacturer non-resident sellers for consumption off-premises.

(B) Notwithstanding § 57-4-102(33)(A), a special occasion license issued for an alcoholic beverage festival authorized by this subsection (j) shall be for the duration of the festival for which application is made for a period not to exceed seventy-two (72) hours. A special occasion license issued pursuant to this subsection (j) shall only be available upon the payment of the fee as required by law for each separate day of the festival.

(C) A nonprofit association authorized to conduct an alcoholic beverage festival pursuant to this subsection (j) shall be permitted to hold the festival in any municipality or county of the state in the manner provided in subdivision (j)(5).

(5) A nonprofit association, as defined in subdivision (j)(1), is authorized to conduct an alcoholic beverage festival pursuant to this subsection (j) in a municipality or county of this state that has approved the sale of alcoholic beverages or has a licensed manufacturer located in that municipality or county, subject to complying with all permit requirements of the municipality or county, and in all other municipalities or counties upon receiving approval of the legislative body of the municipality or county to hold such festival at a location and in such manner authorized by such legislative body.

(k)(1)(A) Any manufacturer licensed under this section shall be permitted to use items related to or incidental to the tasting of alcoholic beverages manufactured on the premises and such items may be mixed with such alcoholic beverages anywhere on or off the manufacturer's premises where tastings are permitted as well as at private events and events requiring a special occasion license. Such items may include, but are not limited to:

(i) Bitters, whether manufactured on the premises or purchased at retail, used in the preparation or garnishment of alcoholic beverages or mixed alcoholic beverages;

(ii) Any and all garnishes and food items used in the preparation or garnishment of alcoholic beverages or mixed alcoholic beverages, including any juices, concentrates, and other ingredients used in the preparation of mixed alcoholic beverages;

(iii) Glassware and any other cups, glasses, or other containers normally used for serving drinks;

(iv) Ice, water, soft drinks, and any other nonalcoholic beverages; and

(v) Other alcoholic beverages manufactured on the premises.

(B) Tastings under subsection (i) shall be limited to one-half ounce (½ oz.) of alcohol per stock keeping unit (sku) per tasting;

(2) Any manufacturer licensed under this section shall be permitted to rent or lease out any portion of their premises for any event, with or without charge, whether the event is public, private, requires a special occasion license as defined in § 57-4-102, or catered by a caterer licensed pursuant to chapter 4, part 1 of this title. Events cannot be held on the bonded premises or general premises of the manufacturer, as defined in 27 CFR part 19, unless the manufacturer has obtained prior approval from the alcohol and tobacco tax and trade bureau (TTB) for such events pursuant to federal regulations.

(3) Owners, officers, employees, and representatives of any manufacturer licensed under this section shall be permitted to touch, handle, and pour product of such manufacturer at any and all tastings permitted by law, including, but not limited to, consumer education seminars, employee education seminars, retail sales demonstrations, consumer tastings, private events, events requiring a special occasion license as defined in § 57-4-102, and any and all tastings permitted under this chapter, and any rules or regulations promulgated.

(4) In the event of a conflict between any other law in this title and this subsection (k), this subsection (k) shall govern.

History.

Acts 1939, ch. 49, § 6; 1945, ch. 167, § 3; 1949, ch. 284, § 5; C. Supp. 1950, § 6648.11 (Williams, § 6648.9); impl. am. Acts 1963, ch. 257, § 18; Acts 1975, ch. 234, § 1; 1976, ch. 838, § 1; T.C.A. (orig. ed.), § 57-115; Acts 2006, ch. 616, § 1; 2012, ch. 968, § 5; 2013, ch. 445, § 3; 2014, ch. 1001, § 7; 2014, ch. 1015, §§ 8, 9; 2016, ch. 976, §§ 1, 2; 2017, ch. 295, § 1; 2018, ch. 1027, § 1.

Amendments.

The 2018 amendment added (i)(5).

Effective Dates.

Acts 2018, ch. 1027, § 3. May 21, 2018.

Attorney General Opinions.

The statutory provisions that prohibit retail sales by Tennessee liquor stores on Sundays and holidays but permit Tennessee distilleries to make retail sales on Sundays and holidays do not violate the Commerce Clause or equal protection guarantees. OAG 16-08, 2016 Tenn. AG LEXIS 8 (3/1/2016).

The General Assembly may provide by private act that no proceeds from Bradley County's tourist accommodation tax may be distributed to or on behalf of any city located in the county. OAG 16-04, 2016 Tenn. AG LEXIS 6 (2/5/2016).

57-3-203. Wholesaler's licenses — Qualifications of applicants — Permits — Salespersons — Employees — Fees — Disposition of alcoholic beverages after nonlicensed persons secure title.

(a) Any person, or general or limited partnership desiring to sell at wholesale any alcoholic spirituous beverage shall make application to the commission for a license so to do, which application shall be in writing and verified, on the forms herein authorized to be prescribed and furnished; thereupon the commission may grant such license subject to the restrictions of this chapter.

(b)(1) Each applicant for a wholesale license shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. Such wholesaler's license, however, shall not be issued unless and until there shall be paid to the commission a separate license fee therefor of three thousand dollars ($3,000), and no license shall be issued except to individuals who are citizens of this state and either have been for at least the two (2) years next preceding citizens of this state or have been citizens of this state at any time for at least fifteen (15) consecutive years.

(2) Notwithstanding any law to the contrary, it shall be lawful for any qualified applicant, including a corporation meeting the requirements of subsection (f), to receive and operate under both an alcoholic beverage wholesaler's license issued pursuant to this part, and a beer wholesaler's license issued pursuant to § 57-5-102, upon satisfying all federal, state and local registration and permitting requirements applicable to both operations. Nothing in this title is intended or shall be construed to prohibit a wholesaler licensed under this part or under chapter 5 of this title from holding more than one (1) license or permit for the wholesale of alcoholic beverages or beer in this state.

(c) No wholesale alcoholic spirituous beverage license shall be issued until the applicant has secured a basic permit to engage in the wholesale liquor business from the federal government.

(d)(1) Each representative or salesperson of any wholesale licensee in this state must obtain a permit from the commission before soliciting orders from retail licensees. No other person shall be allowed to solicit orders for alcoholic beverages from retail licensees, and retail licensees shall not give an order to anyone other than the holder of a wholesale salesperson's permit.

(2) Where a wholesaler licensed under this part also maintains a beer wholesale operation as provided in subdivision (b)(2), it shall be lawful for anyone holding a permit pursuant to this subsection (d) to carry out similar duties with respect to such beer wholesale operation; provided, that the permit holder has also satisfied any legal requirements applicable to such function within a beer wholesale operation.

(e)(1) Every wholesale licensee shall, before employing any person to dispense alcoholic beverages, secure from the commission an employee's permit authorizing such person to serve as an employee in the place of business of such wholesaler. It is made the duty of the wholesaler to see that each person dispensing alcoholic beverages in the wholesaler's place of business has an employee's permit as above required, which permit must be

on the person of such employee or upon the premises of the licensee at all times, subject to inspection by the commission or its duly authorized agent. Nothing in this subdivision (e)(1) requires an employee of a wholesaler to obtain a permit unless the employee is directly involved with the delivery or sale of alcoholic beverages. Employees involved only in warehousing, administrative, or clerical services for a wholesaler are not required to obtain a permit under this subdivision (e)(1).

(2) Where a wholesaler licensed under this part also maintains a beer wholesale operation as provided in subdivision (b)(2), it shall be lawful for anyone holding a permit pursuant to this subsection (e) to carry out similar duties with respect to such beer wholesale operation; provided, that the permit holder has also satisfied any legal requirements applicable to such function within a beer wholesale operation.

(f)(1) A wholesaler's license may, in the discretion of the commission, be issued to a corporation; provided, that no license shall be issued to any corporation unless such corporation meets the following requirements:

(A) All of its capital stock must be owned by individuals who have been residents of Tennessee for not less than five (5) years next preceding or who at any time have been residents of this state for at least fifteen (15) consecutive years, and who have not been convicted within a period of five (5) years preceding acquisition of such stock for violation of either state or United States prohibition laws or revenue laws relating to intoxicating liquors;

(B) No person owning stock in such corporation shall have any interest as partner or otherwise in a business licensed to engage in the retail sale of intoxicating liquors in Tennessee;

(C) No stock of any corporation licensed under this subsection (f) shall be transferred to any person who has not been a resident of Tennessee for at least five (5) years next preceding or who at any time has not been a resident of Tennessee for at least fifteen (15) consecutive years.

(2) The commission is hereby authorized to revoke the wholesale license of any corporation which fails to comply with this subsection (f).

(g) Notwithstanding subsection (f), the commission, in its discretion, may issue a wholesale license to any corporation which has been domiciled in this state for twenty-five (25) years, or which has acquired substantially all of the assets of a Tennessee partnership (or limited liability company) which partnership (or limited liability company) has been continuously operating in this state for ten (10) years where such corporation has the majority of its assets located in this state and all of whose officers in actual control of the wholesale operations shall be actively present at the licensed premises and who are in actual charge of the operations of the wholesaler substantially full- time. If any officers of such corporation have been convicted of any violation of the criminal code or of any violation relating to the enforcement of the liquor laws, no license under this subsection (g) shall issue.

(h) If at any time subsequent to the granting of a wholesale liquor license to any such corporation, the majority of its assets shall cease to remain and be located in this state, and if any of its active officers shall cease to be residents of Tennessee, then the commission, within its discretion, shall have the right

to revoke such license. The commission is further granted the right to make investigations at any time to ascertain if the majority of the assets of such corporation are located within this state and whether all of its active officers are residents of Tennessee, as above set out, and should its findings be in the negative, it may revoke such license. The foregoing shall apply irrespective of the provisions contained in § 57-3-404(d).

(i)(1) No license entitling the holder thereof to sell or deal in alcoholic spirituous beverages at wholesale shall be granted except in respect to premises situated within either a county having a population in excess of one hundred twenty thousand (120,000), according to the 2010 federal census or any subsequent federal census, or a county in which the voters of any municipality or other jurisdiction within that county have approved retail package sales or consumption of alcoholic beverages on premises by referendum as provided in this title.

(2) Notwithstanding the requirement imposed in subdivision (i)(1), a wholesale liquor license, limited to the sale and distribution of wine only, not to exceed six thousand (6,000) cases of wine per year, may be issued to an entity that is located in any municipality which:

(A) Has authorized the sale of alcoholic beverages for consumption on the premises pursuant to § 57-4-103;

(B) Has a bond rating of AAA issued by a nationally recognized bond rating agency; and

(C) Is located within a county which has a bond rating of AAA issued by a nationally recognized bond rating agency.

(j) When a person not licensed under this chapter secures title to any alcoholic beverage owned by a wholesaler as a result of a default on loans or revocation of license, the manufacturer, rectifier, distiller or vintner who sold the alcoholic beverage to the wholesaler shall purchase the alcoholic beverage from the nonlicensed person who secured title in order that the creditors are satisfied. Any manufacturer, rectifier, distiller or vintner who fails within thirty (30) days following default or revocation of license of the wholesaler to effect the purchase from the nonlicensed person who secured title shall not be allowed to ship or sell any alcoholic beverage in this state until the purchase is effected.

History.

Acts 1939, ch. 49, § 7; 1945, ch. 167, § 4; 1947, ch. 73, § 1; 1947, ch. 166, § 1; 1949, ch. 284, §§ 3, 5; C. Supp. 1950, § 6648.12 (Williams, § 6648.10); Acts 1951, ch. 98, § 1; impl. am. Acts 1959, ch. 9, § 14; Acts 1961, ch. 145, §§ 1, 2; impl. am. Acts 1963, ch. 257, §§ 11, 19; Acts 1967, ch. 215, § 3; 1972, ch. 656, § 1; 1976, ch. 505, §§ 1, 2; T.C.A. (orig. ed.), § 57-116; Acts 1995, ch. 396, §§ 2, 3; 2004, ch. 876, § 5; 2012, ch. 592, § 1; 2013, ch. 394, § 1; 2014, ch. 554, §§ 21-24; 2017, ch. 443, § 5.

Compiler's Notes.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Cross-References.

Nonresident sellers, title 57, ch. 3, part 6.

Nonresident seller's permittees prohibited from interest in business licensed under this section, § 57-3-604.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 8, 11, 15.

Attorney General Opinions.

Pursuant to T.C.A.§ 57-3-203(f), the Alcoholic Beverage Commission may issue a wholesaler's license only to a corporation whose stock is owned by individuals who meet certain statutory requirements, and not to a corporation owned by another form of business such as another corporation, limited liability company,

or trust. OAG 11-48, 2011 Tenn. AG LEXIS 50 (5/26/11).

The residency and corporate asset location requirements for applicants seeking a license as an alcoholic beverage wholesaler or package retailer under T.C.A. §§ 57-3-203 and 57-3-204 violate the Commerce Clause of the United States Constitution. OAG 12-59, 2012 Tenn. AG LEXIS 59 (6/6/12).

NOTES TO DECISIONS

1. Interest in Retail Business.

Evidence that person holding 50 percent of stock in wholesale liquor business made loans to son who bought interest in retail liquor store and to owner of retail liquor store justified revocation of wholesale license on ground that licensee had interest in retail liquor business. Bluff City Beverage Co. v. MacFarland, 208 Tenn. 340, 345 S.W.2d 896, 1961 Tenn. LEXIS 292 (1961).

57-3-204. Retailer's licenses — Fees — Permits for employees — Permit renewal — Disposition of alcoholic beverages after nonlicensed persons secure title — Sign required — Penalty for failure to comply. [Effective until July 1, 2021. See the version effective on July 1, 2021.]

(a) For the retail sale of alcoholic spirituous beverages, including beer and malt beverages, as in this chapter defined, a license may be approved for transfer and reissued as herein provided. New licenses shall only be issued for jurisdictions that first approve the retail sale of alcoholic spirituous beverages by local option election conducted under § 57-3-106 after April 1, 2018, or to applicants who have filed applications prior to April 20, 2018. Except as provided in the preceding sentence, in all instances, any person, firm, or corporation desiring to sell alcoholic spirituous beverages, including beer and malt beverages, to patrons or customers, in sealed packages only, and not for consumption on the premises except for conducting tastings pursuant to § 57-3-404(h)(2), shall first acquire the right to purchase an existing license, from an existing licensee and then make application to the commission for the transfer of such existing retailer's license, which application shall be in writing and verified, on forms herein authorized to be prescribed and furnished, and disclosing the name of the proposed transferor of the license; and the commission may, subject to the restrictions of this chapter, approve the transfer of such retailer's license as set forth in § 57-3-212. If the premises with respect to which the license transfer is sought is owned by a person, firm, or corporation not the applicant, the application shall include the name and address of the owner. If the ownership of the premises should change after a license is granted, the licensee shall, within ten (10) days after becoming aware of such change in ownership, notify the commission in writing of the name and address of the new owner.

(b)(1) Each applicant for a retail license or retail license transfer shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars ($300) when the application or application for transfer is submitted for review. A retailer's license under this section shall not be issued or transferred until the applicant has paid to the commission the annual license fee of eight hundred fifty dollars ($850).

(2) No retail license under this section may be issued or transferred to or held by, to any individual:

(A) Who has not been a bona fide resident of this state during the

two-year period immediately preceding the date upon which application is made to the commission or, with respect to renewal of any license issued pursuant to this section, who has not at any time been a resident of this state for at least ten (10) consecutive years;

(B) Who has been convicted of a felony under the laws of this state, any other state or the United States;

(C) Who has had a license related to the manufacture, sale or distribution of any form of alcoholic beverages revoked for cause;

(D) Who is not twenty-one (21) years of age or older;

(E) Who has an interest, whether direct or indirect, in a manufacturer, distiller, rectifier, liquor wholesaler, winery, distributor, retail food store or farm winery selling alcoholic beverages that is licensed in this state, except that the spouse of an applicant for a retail license may own and hold a farm wine permit if the spouse does not hold a retailer's license issued under this section;

(F) Who, other than as a member of the governing body of a city or county, appoints or supervises any law enforcement officer, who is a law enforcement official or who is an employee of the commission;

(G) Who intends to carry on the business authorized by the license as the agent or on behalf of another;

(H) Who at the time of the time of application for renewal of any license issued under this section would not be eligible for the license upon a first application;

(I) Who is the holder of a valid existing license issued for the sale of wine in a retail food store under § 57-3-803, and amendments thereto;

(J) Who does not own the premises for which a license is sought, or does not, at the time of application, have a written and enforceable lease thereon;

(K) Whose spouse would be ineligible to receive a license under this section for any reason other than citizenship, residence requirements or age, except that this subdivision (b)(2)(K) shall not apply in determining eligibility for a renewal license; and

(L) Whose spouse has been convicted of a felony or other crime that would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under this section.

(3) The commission may, in its discretion, issue such a retail license to a corporation; provided, that no such license shall be issued to, transferred to, or maintained by any corporation unless such corporation meets the following requirements:

(A) No retail license shall be issued to, transferred to, or maintained by any corporation if any officer, director or stockholder owning any capital stock in the corporation, would be ineligible to receive a retailer's license for any reason specified in subdivision (b)(2), if application for such retail license had been made by the officer, director or stockholder in their individual capacity;

(B) All of its capital stock must be owned by individuals who are residents of this state and either have been residents of the state for the

two (2) years immediately preceding the date application is made to the commission or, with respect to renewal of any license issued pursuant to this section, who has at any time been a resident of this state for at least ten (10) consecutive years;

(C) No person owning stock in such corporation shall have any interest as partner or otherwise, either direct or indirect, in any business licensed to engage in the distribution of liquor, spirits, wine or high alcohol content beer in Tennessee; and

(D) No stock of any corporation licensed under this section shall be transferred to any person who is not a resident of this state and either has not been a resident of the state for at least two (2) years next preceding or who at any time has not been a resident of this state for at least ten (10) consecutive years.

(4) It is the intent of the general assembly to distinguish between licenses authorized generally under this title and those specifically authorized under this section. Because licenses granted under this section include the retail sale of liquor, spirits and high alcohol content beer which contain a higher alcohol content than those contained in wine or beer, as defined in § 57-5-101(b), it is in the interest of this state to maintain a higher degree of oversight, control and accountability for individuals involved in the ownership, management and control of licensed retail premises. For these reasons, it is in the best interest of the health, safety and welfare of this state to require all licensees to be residents of this state as provided herein and the commission is authorized and instructed to prescribe such inspection, reporting and educational programs as it shall deem necessary or appropriate to ensure that the laws, rules and regulations governing such licensees are observed.

(c)(1) If a retail licensee ceases to do business through the voluntary or involuntary loss of the licensee's license, or if a person not licensed under this chapter obtains title to alcoholic beverages of a retail licensee as a result of a defaulted loan or execution, the wholesaler who sold the alcoholic beverages to the retailer shall purchase such alcoholic beverages from the retailer at a base price of the wholesalers' laid-in cost of such alcoholic beverage. A wholesaler shall be permitted an offset or charge against such payment for any outstanding obligation owed to the wholesaler by such licensee or for reasonable labor, restocking and transportation charges.

(2) Any licensee objecting to the reasonableness of the offset or charge may petition the commission to review such, and shall designate the wholesaler as a respondent. The commission shall conduct a contested case hearing pursuant to the Uniform Administrative Procedure Act, compiled in title 4, chapter 5, part 3, to consider the objection.

(3) The obligation imposed on a wholesaler under this section does not apply to any product which:

(A) Is damaged or cannot be legally sold in this state;

(B) Is not sold to a retailer within one hundred eighty (180) days of demand for repayment;

(C) The wholesaler from whom the product was purchased is not the designated distributor pursuant to § 57-3-301, at the time demand is made;

(D) Product contains a price tag not readily removable; or

(E) Is sold in a commemorative bottle, seasonal decanter or other novelty container.

(4)(A) Notwithstanding § 57-3-406(b), if a retail licensee is not in debt to a wholesaler for any credit law violations or refused check and provides a thirty-day irrevocable notice of surrender to the commission prior to the termination of the license, the licensee shall be able to sell any unopened bottle inventory to any customer below the cost paid by the retailer to purchase the alcoholic beverages from the wholesaler so long as the price is not lower than ten percent (10%) of such purchase price.

(B) A retail licensee selling a product in accordance with this section shall not subsequently purchase that product from the wholesaler prior to termination of the license.

(C) A retail licensee unable to sell product in accordance with this subdivision (c)(4) shall be able to keep the remaining product for personal use.

(d)(1) A manufacturer licensed under § 57-3-202, or under chapter 2 of this title, is authorized to obtain a license under this section for the retail sale of alcoholic beverages or products containing alcohol subject to the further restrictions of this subsection (d).

(2) A manufacturer seeking to obtain a retail license under this subsection (d) shall apply to the commission on such forms as the commission may prescribe.

(3) A retail license issued under this subsection (d) may be located only on the licensed premises of the manufacturers and may be located on such premises whether or not such premises is located in a jurisdiction which has authorized retail sale of alcoholic beverages pursuant to § 57-3-106.

(4) A manufacturer licensed to sell at retail at its retail location under this subsection (d) may sell only such products as are manufactured on the manufacturer's premises; provided, that at such retail location no more than five gallons (5 gal.) or one sixth (⅙) of a barrel of its products may be sold to any one (1) individual per visit to the premises.

(5) A retail license issued under this subsection (d) may be issued to a manufacturer, regardless of the residency or domicile of the manufacturer, notwithstanding the requirements imposed by subsection (b).

(6) Notwithstanding any other law to the contrary, a retail licensee, held by a manufacturer or distiller, may serve samples of the product manufactured or distilled at the premises to any person of legal drinking age without cost or may include such samples as part of a tour of the manufacturer's or distiller's premises available to the public with or without cost. Such samples may be made available at either the premises of the retailer or at such other location on the premises of the manufacturer or distiller holding such retail license which other location has been disclosed to the commission and may be any location on the premises permitted by federal law.

(7) If the retail license under this subsection (d) is held by a manufacturer of high alcohol content beer authorized to manufacture such beverages, then:

(A) Notwithstanding any other law, the retailer may sell its products at such retail location which are manufactured on the manufacturer's

premises in accordance with subdivisions (d)(7)(B) and (C) in sizes and containers that are made available through the general wholesale/retail distribution system; provided, that subsection (e) related to the delivery of alcoholic beverages by wholesalers shall be applicable;

(B)(i) Such retailer may also offer and sell beer, as beer is defined in § 57-5-101(b), for consumption on or off-premises, at the same physical location at which it offers samples of and sells its high alcohol content beer; provided, that such beer and high alcohol content beer is brewed on the manufacturer's premises located at the retail location; and further provided, that such manufacturer may distribute such beer as defined in § 57-5-101(b) only to wholesalers licensed pursuant to chapter 5 of this title. A wholesaler of such products may permit a manufacturer to deliver its products to the retail premises operated by such manufacturer directly; provided, that the wholesaler permitting such direct shipment must include the amounts delivered in its inventory and depletions for purposes of tax collections;

(ii) Notwithstanding any other law to the contrary, the hours and days on which such beer or high alcohol content beer may be sold at retail by a manufacturer authorized to manufacture such beverages pursuant to § 57-2-103(f) shall be as set by the governing body of the local jurisdiction in which the manufacturer is located, and such governing body shall further have the authority to authorize the sale of high alcohol content beer and beer within the same store notwithstanding § 57-3-404(e)(1);

(C) Such retailer may sell no more than five gallons (5 gal.) or one sixth (⅙) of a barrel of beer or high alcohol content beer or any combination of such beverages to any one (1) individual per visit to the premises.

(e)(1) A manufacturer licensed under chapter 2 of this title, or this chapter 3, may distribute alcoholic beverages or products containing alcohol only to a wholesaler licensed pursuant to § 57-3-203 where such alcoholic beverages or products are intended for sale at retail in this state; provided, however, that, where such alcoholic beverages are not intended for resale, a manufacturer may make complimentary distributions as allowed by § 57-3-404 and on a periodic basis to its employee or employees in the normal course of employment and to others not licensed under this chapter for routine business or marketing purposes. A wholesaler may permit a manufacturer to deliver its products to the retail premises operated by such manufacturer directly; provided, that the wholesaler permitting such direct shipment must include the amounts delivered in its inventory and depletions for purposes of tax collections imposed pursuant to §§ 57-3-302, 57-6-201 and 57-3-501.

(2) No wholesaler may restrict the sale of its products to a retail license held by a manufacturer but must make its products available to any retailer licensed under this section.

(f)(1) Subsection (d) applies only in those jurisdictions where the voters have approved the sale of alcoholic beverages for off-premises consumption by referendum held pursuant to § 57-3-106 or where the voters have, by local option election, approved the issuance of such special retail license. A special local option election as authorized by this subsection (f), shall be conducted in the manner prescribed in § 57-3-106; provided, that the question submit-

ted to the voters shall be in the following form:

To permit licensed manufacturers to obtain a license to sell alcoholic beverages at retail in _____ (here insert jurisdiction).

Not to permit licensed manufacturers to obtain a license to sell alcoholic beverages at retail in _____ (here insert jurisdiction).

(2) In any county having within its boundaries a manufacturer, where the voters of municipalities located within such county have approved the sale of alcoholic beverages, pursuant to § 57-3-106, and where the total population of such municipalities exceeds fifty percent (50%) of the population of the county, no such referendum shall be required; provided, that the authorized retail sales by a manufacturer where no referendum is required is not effective until January 1, 1995.

(g)(1) A restaurant licensed by the commission pursuant to § 57-4-101(a)(1) may also own, or operate, a separate retail license issued under this section to permit off-premise consumption, if such entity satisfies the further conditions of either subdivision (g)(2) or (g)(3).

(2)(A) Notwithstanding the restrictions of § 57-3-208, a restaurant or its affiliate may own or operate a license issued pursuant to § 57-3-204 if:

(i) The retail licensee is located within the same structure as the restaurant in a defined section or portion of the structure as approved by the commission;

(ii) The retail package store and the restaurant are located in a structure constructed prior to 1925 that is placed on the national register of historic places;

(iii) The structure within which such retail package store and restaurant are located shall not be closer than three hundred feet (300′) nor more distant than three hundred fifty feet (350′) from a federal interstate highway;

(iv) The structure within which such retail package store and restaurant are located shall be no farther than one hundred feet (100′) from a public park adjacent to a navigable waterway, and shall be no closer than five hundred feet (500′) nor more distant than five hundred fifty feet (550′) from a railway station providing commuter rail service that railway employs standard gauge locomotives and coaches; and

(v) The structure within which such retail package store and restaurant are located shall be located within a county having a metropolitan form of government with a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census.

(B) Notwithstanding § 57-3-208, the retail license issued pursuant to this subsection (g) to a restaurant or its affiliate shall be subject to the requirements of this title. It shall be the duty of the commission to verify that all persons owning or operating a retail license issued under this subdivision (g)(2) meet the qualifications to receive a license.

(3)(A) Notwithstanding the requirements of § 57-3-208, a restaurant, or its affiliate, may also own or operate a license issued pursuant to § 57-3-204, if:

(i) The location of the retail licensee is in the same structure as the restaurant; provided, the retail operations are conducted in a portion of

the structure as identified to and approved by the commission;

(ii) The structure within which the restaurant and the retail licensee are located is situated on:

(a) A tract or tracts of land having at least twenty-four (24) contiguous acres;

(b) Land adjacent to a federal interstate highway; and

(c) Property no farther than two hundred fifty feet (250′) from a commercial railroad tract, upon which tracts of land there is a residence constructed prior to 1860 and upon which tracts is located a historic stable and carriage house;

(iii) The retail licensee is owned or authorized to be operated by an entity recognized as exempt from taxation under Internal Revenue Code Section 501(c)(3) (26 U.S.C. § 501(c)(3)); and

(iv) The retail licensee is located within a county having a metropolitan form of government with a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census.

(B) Notwithstanding § 57-3-208, any retail license issued pursuant to this subdivision (g)(3) shall be subject to the requirements of this title. It shall be the duty of the commission to verify that the entity owning or operating the retail license meets the qualifications of this subdivision (g)(3) and that all of the owners or operators authorized by the nonprofit entity to operate the license otherwise qualify under this title.

(h)(1) Notwithstanding this section or § 57-3-208, a terminal building of a commercial air carrier airport that is a member of the Tennessee Association of Air Carrier Airports may obtain a retail license under this section authorizing the licensee to sell alcoholic beverages at retail in accordance with this subsection (h).

(2) A retail license issued under subdivision (h)(1) authorizes a terminal building of a commercial air carrier airport to operate one (1) or more noncontiguous retail stores located within the area of the terminal building secured by the transportation security administration or its successor organization.

(3) A retail store licensed under this subsection (h):

(A) May sell alcoholic beverages that:

(i) Are manufactured within this state;

(ii) Are packaged in tamper-resistant sealed packages; and

(iii) Indicate on the packaging that the customer is prohibited from consuming the alcoholic beverage until the customer reaches the customer's final destination;

(B) Notwithstanding § 57-3-406(e) and (h), may sell alcoholic beverages on any day and during any hours during which the terminal building of a commercial air carrier airport is authorized to sell alcoholic beverages for on-premises consumption;

(C) May store inventory at one (1) or more secure locations other than the premises of the retail store that are located within the terminal building;

(D) May transfer and transport inventory to and from storage locations; and

(E) Shall not conduct consumer educational seminars or authorize its employees or agents to receive complimentary samples at a sales demonstration under § 57-3-404(h).

(4) Subsection (a) and subdivisions (b)(1), (2), (3)(A), and (3)(C) shall apply to retail stores licensed under this subsection (h).

(5) The commission shall verify that a terminal building of a commercial air carrier airport meets all qualifications for licensure under this subsection (h) prior to issuing a license.

(6) As used in this subsection (h), unless the context otherwise requires, "terminal building of a commercial air carrier airport" has the same meaning as defined in § 57-4-102.

History.

Acts 1939, ch. 49, § 8; 1945, ch. 167, § 5; 1949, ch. 284, §§ 4, 5; C. Supp. 1950, § 6648.13 (Williams, § 6648.11); impl. am. Acts 1963, ch. 251, § 20; Acts 1972, ch. 656, § 1; 1976, ch. 505, §§ 1, 2; 1977, ch. 461, § 1; T.C.A. (orig. ed.), § 57-117; Acts 1980, ch. 771, § 2; 1981, ch. 156, §§ 1, 2; 1984, ch. 746, § 1; 1988, ch. 836, § 1; 1990, ch. 794, §§ 1, 2; 1993, ch. 368, §§ 1, 2; 1995, ch. 214, § 1; 1995, ch. 396, §§ 4, 5; 1996, ch. 925, § 1; 1997, ch. 543, §§ 1-3; 2004, ch. 876, § 3; 2009, ch. 395, § 3; 2010, ch. 788, §§ 1, 2; 2010, ch. 1009, § 5; 2011, ch. 448, §§ 13, 15, 16; 2012, ch. 947, § 3; 2014, ch. 554, §§ 15, 27, 32; 2015, ch. 428, § 1; 2016, ch. 1068, § 1; 2018, ch. 783, §§ 5, 7-10.

Compiler's Notes.

For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2010, ch. 1009 was repassed over the governor's veto on June 4, 2010.

Acts 2018, ch. 783, § 14 provided that sections 7 through 12 of the act shall be repealed on July 1, 2021, and the provisions of this section and §§ 57-3-208 and 57-3-212 as they existed prior to being amended by Sections 7 through 12 of the act shall be reinstated.

Amendments.

The 2018 amendment added (c)(4); and, effective from April 20, 2018 until July 1, 2021, substituted "approved for transfer and reissued as herein provided. New licenses shall only be issued for jurisdictions that first approve the retail sale of alcoholic spirituous beverages by local option election conducted under § 57-3-106 after April 1, 2018, or to applicants who have filed applications prior to April 20, 2018" for "issued as herein provided" at the end of the first sentence in (a); In the second sentence of (a), added "Except as provided in the preceding sentence, in all instances," at the beginning, inserted " first acquire the right to purchase an existing license, from an existing licensee and then" preceding "make application", inserted ", and disclosing the name of the proposed transferor of the license" following "prescribed and furnished", substituted "approve the transfer of" for "issue" preceding "such retailer's license", and added "as set forth in § 57-3-212." at the end; in (b)(1), inserted "or retail license transfer" near the beginning and "or application for transfer" near the end of the first sentence, and inserted "or transferred" following "issued" and substituted "has" for "shall have" in the second sentence; in (b)(2), inserted "or transferred to or held by," following "issued"; and in (b)(3) and (b)(3)(A), inserted ", transferred to, or maintained by" following "issued to".

Effective Dates.

Acts 2018, ch.783, § 14. April 20, 2018.

Cross-References.

Nonresident seller's permittees prohibited from interest in business licensed under this section, § 57-3-604.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 8, 9, 15.

Attorney General Opinions.

The residency and corporate asset location requirements for applicants seeking a license as an alcoholic beverage wholesaler or package retailer under T.C.A. §§ 57-3-203 and 57-3-204 violate the Commerce Clause of the United States Constitution. OAG 12-59, 2012 Tenn. AG LEXIS 59 (6/6/12).

The residency requirements set forth in T.C.A. § 57-3-204(b)(2)(A), as amended by Acts 2014, ch. 554, § 27, violates the Commerce Clause of the United States Constitution. The requirements facially discriminate against nonresidents, and the intent expressed in T.C.A. § 57-3-204(b)(4) does not establish a local purpose sufficient to justify the discriminatory licensing provisions. OAG 14-83, 2014 Tenn. AG LEXIS 86 (9/12/14).

NOTES TO DECISIONS

Analysis

1. Implied Condition of License.
2. Name in Which License Issued.
3. Conspiracy to Sell Without License.
4. Exceeding Terms of License.
5. Durational Residency Requirements Violated Dormant Commerce Clause.

1. Implied Condition of License.

A licensee to sell liquor at retail accepted his license with the implied condition that laws and regulations which would curtail it might legally be made during the term of the license. Davis v. Boyd, 192 Tenn. 409, 241 S.W.2d 510, 1951 Tenn. LEXIS 421 (1951).

2. Name in Which License Issued.

Where son operated liquor store under trade name and county and state licenses were issued in trade name and city license was issued to the mother as doing business under such trade name, claims made against the son in bankruptcy proceedings for debts incurred in trade name were valid and the fact that licenses were not issued in the name of the son did not render such contracts illegal. Robinson v. Hamilton Wholesale Liquor Co., 132 F.2d 285, 1942 U.S. App. LEXIS 2581 (6th Cir. Tenn. 1942).

3. Conspiracy to Sell Without License.

The sale of intoxicating liquors by one not licensed by the state to do so is a misdemeanor and there can be a conviction under former T.C.A. § 39-1-601 for the crime of conspiring to commit such offense. Owens v. State, 178 Tenn. 32, 154 S.W.2d 529, 1941 Tenn. LEXIS 25 (1941) (decided prior to enactment of § 39-12-103 in 1989).

4. Exceeding Terms of License.

If the commission finds that persons who have been issued a retail license have gone into the wholesale field it has the duty to call them to account for their actions, and if the proof shows that this is true it has the discretionary right to revoke their licenses. Little v. MacFarland, 206 Tenn. 665, 337 S.W.2d 233, 1960 Tenn. LEXIS 416 (1960).

In considering whether terms of licenses had been violated by holders of retail licenses commission could properly consider the definitions of "retail sale," "sale at retail," "retailer," "wholesale sale" and "sale at wholesale" as contained in former T.C.A. § 57-3-101. Little v. MacFarland, 206 Tenn. 665, 337 S.W.2d 233, 1960 Tenn. LEXIS 416 (1960).

5. Durational Residency Requirements Violated Dormant Commerce Clause.

Durational residency requirements in T.C.A. § 57-3-204(b)(2)(A), (3)(A)-(B), and (3)(D) violated dormant Commerce Clause because they were facially discriminatory by preventing out-of-state residents from obtaining retail licenses and protecting in-state residents who were retailers, and there was no evidence that Tennessee could not achieve its goals through nondiscriminatory means; those provisions were severed from Tennessee statute. Byrd v. Tenn. Wine & Spirits Retailers Ass'n, — F.3d —, 2018 FED App. 0035P, 2018 FED App. 35P, 2018 U.S. App. LEXIS 4081 (6th Cir. Feb. 21, 2018).

57-3-204. Retailer's licenses — Fees — Permits for employees — Permit renewal — Disposition of alcoholic beverages after nonlicensed persons secure title — Sign required — Penalty for failure to comply. [Effective on July 1, 2021. See the version effective until July 1, 2021.]

(a) For the retail sale of alcoholic spirituous beverages, including beer and malt beverages, as in this chapter defined, a license may be issued as herein provided. Any person, firm, or corporation desiring to sell alcoholic spirituous beverages, including beer and malt beverages, to patrons or customers, in sealed packages only, and not for consumption on the premises except for conducting tastings pursuant to § 57-3-404(h)(2), shall make application to the commission for a retailer's license, which application shall be in writing and verified, on forms herein authorized to be prescribed and furnished; and the commission may, subject to the restrictions of this chapter, issue such retailer's license. If the premises with respect to which the license is sought is owned by a person, firm or corporation not the applicant, the application shall include the name and address of the owner. If the ownership of the premises should change after a license is granted, the licensee shall, within ten (10) days after becoming aware

of such change in ownership, notify the commission in writing of the name and address of the new owner.

(b)(1) Each applicant for a retail license shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. A retailer's license under this section shall not be issued until the applicant shall have paid to the commission the annual license fee of eight hundred fifty dollars ($850).

(2) No retail license under this section may be issued to any individual:

(A) Who has not been a bona fide resident of this state during the two-year period immediately preceding the date upon which application is made to the commission or, with respect to renewal of any license issued pursuant to this section, who has not at any time been a resident of this state for at least ten (10) consecutive years;

(B) Who has been convicted of a felony under the laws of this state, any other state or the United States;

(C) Who has had a license related to the manufacture, sale or distribution of any form of alcoholic beverages revoked for cause;

(D) Who is not twenty-one (21) years of age or older;

(E) Who has an interest, whether direct or indirect, in a manufacturer, distiller, rectifier, liquor wholesaler, winery, distributor, retail food store or farm winery selling alcoholic beverages that is licensed in this state, except that the spouse of an applicant for a retail license may own and hold a farm wine permit if the spouse does not hold a retailer's license issued under this section;

(F) Who, other than as a member of the governing body of a city or county, appoints or supervises any law enforcement officer, who is a law enforcement official or who is an employee of the commission;

(G) Who intends to carry on the business authorized by the license as the agent or on behalf of another;

(H) Who at the time of the time of application for renewal of any license issued under this section would not be eligible for the license upon a first application;

(I) Who is the holder of a valid existing license issued for the sale of wine in a retail food store under § 57-3-803, and amendments thereto;

(J) Who does not own the premises for which a license is sought, or does not, at the time of application, have a written and enforceable lease thereon;

(K) Whose spouse would be ineligible to receive a license under this section for any reason other than citizenship, residence requirements or age, except that this subdivision (b)(2)(K) shall not apply in determining eligibility for a renewal license; and

(L) Whose spouse has been convicted of a felony or other crime that would disqualify a person from licensure under this section and such felony or other crime was committed during the time that the spouse held a license under this section.

(3) The commission may, in its discretion, issue such a retail license to a corporation; provided, that no such license shall be issued to any corporation unless such corporation meets the following requirements:

(A) No retail license shall be issued to any corporation if any officer, director or stockholder owning any capital stock in the corporation, would

be ineligible to receive a retailer's license for any reason specified in subdivision (b)(2), if application for such retail license had been made by the officer, director or stockholder in their individual capacity;

(B) All of its capital stock must be owned by individuals who are residents of this state and either have been residents of the state for the two (2) years immediately preceding the date application is made to the commission or, with respect to renewal of any license issued pursuant to this section, who has at any time been a resident of this state for at least ten (10) consecutive years;

(C) No person owning stock in such corporation shall have any interest as partner or otherwise, either direct or indirect, in any business licensed to engage in the distribution of liquor, spirits, wine or high alcohol content beer in Tennessee; and

(D) No stock of any corporation licensed under this section shall be transferred to any person who is not a resident of this state and either has not been a resident of the state for at least two (2) years next preceding or who at any time has not been a resident of this state for at least ten (10) consecutive years.

(4) It is the intent of the general assembly to distinguish between licenses authorized generally under this title and those specifically authorized under this section. Because licenses granted under this section include the retail sale of liquor, spirits and high alcohol content beer which contain a higher alcohol content than those contained in wine or beer, as defined in § 57-5-101(b), it is in the interest of this state to maintain a higher degree of oversight, control and accountability for individuals involved in the ownership, management and control of licensed retail premises. For these reasons, it is in the best interest of the health, safety and welfare of this state to require all licensees to be residents of this state as provided herein and the commission is authorized and instructed to prescribe such inspection, reporting and educational programs as it shall deem necessary or appropriate to ensure that the laws, rules and regulations governing such licensees are observed.

(c)(1) If a retail licensee ceases to do business through the voluntary or involuntary loss of the licensee's license, or if a person not licensed under this chapter obtains title to alcoholic beverages of a retail licensee as a result of a defaulted loan or execution, the wholesaler who sold the alcoholic beverages to the retailer shall purchase such alcoholic beverages from the retailer at a base price of the wholesalers' laid-in cost of such alcoholic beverage. A wholesaler shall be permitted an offset or charge against such payment for any outstanding obligation owed to the wholesaler by such licensee or for reasonable labor, restocking and transportation charges.

(2) Any licensee objecting to the reasonableness of the offset or charge may petition the commission to review such, and shall designate the wholesaler as a respondent. The commission shall conduct a contested case hearing pursuant to the Uniform Administrative Procedure Act, compiled in title 4, chapter 5, part 3, to consider the objection.

(3) The obligation imposed on a wholesaler under this section does not apply to any product which:

(A) Is damaged or cannot be legally sold in this state;

(B) Is not sold to a retailer within one hundred eighty (180) days of demand for repayment;

(C) The wholesaler from whom the product was purchased is not the designated distributor pursuant to § 57-3-301, at the time demand is made;

(D) Product contains a price tag not readily removable; or

(E) Is sold in a commemorative bottle, seasonal decanter or other novelty container.

(4)(A) Notwithstanding § 57-3-406(b), if a retail licensee is not in debt to a wholesaler for any credit law violations or refused check and provides a thirty-day irrevocable notice of surrender to the commission prior to the termination of the license, the licensee shall be able to sell any unopened bottle inventory to any customer below the cost paid by the retailer to purchase the alcoholic beverages from the wholesaler so long as the price is not lower than ten percent (10%) of such purchase price.

(B) A retail licensee selling a product in accordance with this section shall not subsequently purchase that product from the wholesaler prior to termination of the license.

(C) A retail licensee unable to sell product in accordance with this subdivision (c)(4) shall be able to keep the remaining product for personal use.

(d)(1) A manufacturer licensed under § 57-3-202, or under chapter 2 of this title, is authorized to obtain a license under this section for the retail sale of alcoholic beverages or products containing alcohol subject to the further restrictions of this subsection (d).

(2) A manufacturer seeking to obtain a retail license under this subsection (d) shall apply to the commission on such forms as the commission may prescribe.

(3) A retail license issued under this subsection (d) may be located only on the licensed premises of the manufacturers and may be located on such premises whether or not such premises is located in a jurisdiction which has authorized retail sale of alcoholic beverages pursuant to § 57-3-106.

(4) A manufacturer licensed to sell at retail at its retail location under this subsection (d) may sell only such products as are manufactured on the manufacturer's premises; provided, that at such retail location no more than five gallons (5 gal.) or one sixth (1/6) of a barrel of its products may be sold to any one (1) individual per visit to the premises.

(5) A retail license issued under this subsection (d) may be issued to a manufacturer, regardless of the residency or domicile of the manufacturer, notwithstanding the requirements imposed by subsection (b).

(6) Notwithstanding any other law to the contrary, a retail licensee, held by a manufacturer or distiller, may serve samples of the product manufactured or distilled at the premises to any person of legal drinking age without cost or may include such samples as part of a tour of the manufacturer's or distiller's premises available to the public with or without cost. Such samples may be made available at either the premises of the retailer or at such other location on the premises of the manufacturer or distiller holding such retail license which other location has been disclosed to the commission and may be any

location on the premises permitted by federal law.

(7) If the retail license under this subsection (d) is held by a manufacturer of high alcohol content beer authorized to manufacture such beverages, then:

(A) Notwithstanding any other law, the retailer may sell its products at such retail location which are manufactured on the manufacturer's premises in accordance with subdivisions (d)(7)(B) and (C) in sizes and containers that are made available through the general wholesale/retail distribution system; provided, that subsection (e) related to the delivery of alcoholic beverages by wholesalers shall be applicable;

(B)(i) *Such retailer may also offer and sell beer, as beer is defined in § 57-5-101(b), for consumption on or off-premises, at the same physical location at which it offers samples of and sells its high alcohol content beer; provided, that such beer and high alcohol content beer is brewed on the manufacturer's premises located at the retail location; and further provided, that such manufacturer may distribute such beer as defined in § 57-5-101(b) only to wholesalers licensed pursuant to chapter 5 of this title. A wholesaler of such products may permit a manufacturer to deliver its products to the retail premises operated by such manufacturer directly; provided, that the wholesaler permitting such direct shipment must include the amounts delivered in its inventory and depletions for purposes of tax collections;*

(ii) Notwithstanding any other law to the contrary, the hours and days on which such beer or high alcohol content beer may be sold at retail by a manufacturer authorized to manufacture such beverages pursuant to § 57-2-103(f) shall be as set by the governing body of the local jurisdiction in which the manufacturer is located, and such governing body shall further have the authority to authorize the sale of high alcohol content beer and beer within the same store notwithstanding § 57-3-404(e)(1);

(C) Such retailer may sell no more than five gallons (5 gal.) or one sixth (1/6) of a barrel of beer or high alcohol content beer or any combination of such beverages to any one (1) individual per visit to the premises.

(e)(1) A manufacturer licensed under chapter 2 of this title, or this chapter 3, may distribute alcoholic beverages or products containing alcohol only to a wholesaler licensed pursuant to § 57-3-203 where such alcoholic beverages or products are intended for sale at retail in this state; provided, however, that, where such alcoholic beverages are not intended for resale, a manufacturer may make complimentary distributions as allowed by § 57-3-404 and on a periodic basis to its employee or employees in the normal course of employment and to others not licensed under this chapter for routine business or marketing purposes. A wholesaler may permit a manufacturer to deliver its products to the retail premises operated by such manufacturer directly; provided, that the wholesaler permitting such direct shipment must include the amounts delivered in its inventory and depletions for purposes of tax collections imposed pursuant to §§ 57-3-302, 57-6-201 and 57-3-501.

(2) No wholesaler may restrict the sale of its products to a retail license held by a manufacturer but must make its products available to any retailer licensed under this section.

(f)(1) Subsection (d) applies only in those jurisdictions where the voters have approved the sale of alcoholic beverages for off-premises consumption by

referendum held pursuant to § 57-3-106 or where the voters have, by local option election, approved the issuance of such special retail license. A special local option election as authorized by this subsection (f), shall be conducted in the manner prescribed in § 57-3-106; provided, that the question submitted to the voters shall be in the following form:

To permit licensed manufacturers to obtain a license to sell alcoholic beverages at retail in _____ (here insert jurisdiction).

Not to permit licensed manufacturers to obtain a license to sell alcoholic beverages at retail in _____ (here insert jurisdiction).

(2) In any county having within its boundaries a manufacturer, where the voters of municipalities located within such county have approved the sale of alcoholic beverages, pursuant to § 57-3-106, and where the total population of such municipalities exceeds fifty percent (50%) of the population of the county, no such referendum shall be required; provided, that the authorized retail sales by a manufacturer where no referendum is required is not effective until January 1, 1995.

(g)(1) A restaurant licensed by the commission pursuant to § 57-4-101(a)(1) may also own, or operate, a separate retail license issued under this section to permit off-premise consumption, if such entity satisfies the further conditions of either subdivision (g)(2) or (g)(3).

(2)(A) Notwithstanding the restrictions of § 57-3-208, a restaurant or its affiliate may own or operate a license issued pursuant to § 57-3-204 if:

(i) The retail licensee is located within the same structure as the restaurant in a defined section or portion of the structure as approved by the commission;

(ii) The retail package store and the restaurant are located in a structure constructed prior to 1925 that is placed on the national register of historic places;

(iii) The structure within which such retail package store and restaurant are located shall not be closer than three hundred feet (300′) nor more distant than three hundred fifty feet (350′) from a federal interstate highway;

(iv) The structure within which such retail package store and restaurant are located shall be no farther than one hundred feet (100′) from a public park adjacent to a navigable waterway, and shall be no closer than five hundred feet (500′) nor more distant than five hundred fifty feet (550′) from a railway station providing commuter rail service that railway employs standard gauge locomotives and coaches; and

(v) The structure within which such retail package store and restaurant are located shall be located within a county having a metropolitan form of government with a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census.

(B) Notwithstanding § 57-3-208, the retail license issued pursuant to this subsection (g) to a restaurant or its affiliate shall be subject to the requirements of this title. It shall be the duty of the commission to verify that all persons owning or operating a retail license issued under this subdivision (g)(2) meet the qualifications to receive a license.

(3)(A) Notwithstanding the requirements of § 57-3-208, a restaurant, or its affiliate, may also own or operate a license issued pursuant to § 57-3-204, if:

(i) The location of the retail licensee is in the same structure as the restaurant; provided, the retail operations are conducted in a portion of the structure as identified to and approved by the commission;

(ii) The structure within which the restaurant and the retail licensee are located is situated on:

(a) A tract or tracts of land having at least twenty-four (24) contiguous acres;

(b) Land adjacent to a federal interstate highway; and

(c) Property no farther than two hundred fifty feet (250') from a commercial railroad tract, upon which tracts of land there is a residence constructed prior to 1860 and upon which tracts is located a historic stable and carriage house;

(iii) The retail licensee is owned or authorized to be operated by an entity recognized as exempt from taxation under Internal Revenue Code Section 501(c)(3) (26 U.S.C. § 501(c)(3)); and

(iv) The retail licensee is located within a county having a metropolitan form of government with a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census.

(B) Notwithstanding § 57-3-208, any retail license issued pursuant to this subdivision (g)(3) shall be subject to the requirements of this title. It shall be the duty of the commission to verify that the entity owning or operating the retail license meets the qualifications of this subdivision (g)(3) and that all of the owners or operators authorized by the nonprofit entity to operate the license otherwise qualify under this title.

(h)(1) Notwithstanding this section or § 57-3-208, a terminal building of a commercial air carrier airport that is a member of the Tennessee Association of Air Carrier Airports may obtain a retail license under this section authorizing the licensee to sell alcoholic beverages at retail in accordance with this subsection (h).

(2) A retail license issued under subdivision (h)(1) authorizes a terminal building of a commercial air carrier airport to operate one (1) or more noncontiguous retail stores located within the area of the terminal building secured by the transportation security administration or its successor organization.

(3) A retail store licensed under this subsection (h):

(A) May sell alcoholic beverages that:

(i) Are manufactured within this state;

(ii) Are packaged in tamper-resistant sealed packages; and

(iii) Indicate on the packaging that the customer is prohibited from consuming the alcoholic beverage until the customer reaches the customer's final destination;

(B) Notwithstanding § 57-3-406(e) and (h), may sell alcoholic beverages on any day and during any hours during which the terminal building of a commercial air carrier airport is authorized to sell alcoholic beverages for on-premises consumption;

(C) May store inventory at one (1) or more secure locations other than the premises of the retail store that are located within the terminal building;

(D) May transfer and transport inventory to and from storage locations; and

(E) Shall not conduct consumer educational seminars or authorize its employees or agents to receive complimentary samples at a sales demonstration under § 57-3-404(h).

(4) Subsection (a) and subdivisions (b)(1), (2), (3)(A), and (3)(C) shall apply to retail stores licensed under this subsection (h).

(5) The commission shall verify that a terminal building of a commercial air carrier airport meets all qualifications for licensure under this subsection (h) prior to issuing a license.

(6) As used in this subsection (h), unless the context otherwise requires, "terminal building of a commercial air carrier airport" has the same meaning as defined in § 57-4-102.

History.

Acts 1939, ch. 49, § 8; 1945, ch. 167, § 5; 1949, ch. 284, §§ 4, 5; C. Supp. 1950, § 6648.13 (Williams, § 6648.11); impl. am. Acts 1963, ch. 251, § 20; Acts 1972, ch. 656, § 1; 1976, ch. 505, §§ 1, 2; 1977, ch. 461, § 1; T.C.A. (orig. ed.), § 57-117; Acts 1980, ch. 771, § 2; 1981, ch. 156, §§ 1, 2; 1984, ch. 746, § 1; 1988, ch. 836, § 1; 1990, ch. 794, §§ 1, 2; 1993, ch. 368, §§ 1, 2; 1995, ch. 214, § 1; 1995, ch. 396, §§ 4, 5; 1996, ch. 925, § 1; 1997, ch. 543, §§ 1-3; 2004, ch. 876, § 3; 2009, ch. 395, § 3; 2010, ch. 788, §§ 1, 2; 2010, ch. 1009, § 5; 2011, ch. 448, §§ 13, 15, 16; 2012, ch. 947, § 3; 2014, ch. 554, §§ 15, 27, 32; 2015, ch. 428, § 1; 2016, ch. 1068, § 1; 2018, ch. 783, §§ 5, 7-10.

Compiler's Notes.

For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2010, ch. 1009 was repassed over the governor's veto on June 4, 2010.

Acts 2018, ch. 783, § 14 provided that sections 7 through 12 of the act shall be repealed on July 1, 2021, and the provisions of this section and §§ 57-3-208 and 57-3-212 as they existed prior to being amended by Sections 7 through 12 of the act shall be reinstated.

Amendments.

The 2018 amendment added (c)(4); and, effective from April 20, 2018 until July 1, 2021, substituted "approved for transfer and reissued as herein provided. New licenses shall only be issued for jurisdictions that first approve the retail sale of alcoholic spirituous beverages by local option election conducted under § 57-3-106 after April 1, 2018, or to applicants who have filed applications prior to April 20, 2018" for "issued as herein provided" at the end of the first sentence in (a); In the second sentence of (a), added "Except as provided in the preceding sentence, in all instances," at the beginning, inserted " first acquire the right to purchase an existing license, from an existing licensee and then" preceding "make application", inserted ", and disclosing the name of the proposed transferor of the license" following "prescribed and furnished", substituted "approve the transfer of" for "issue" preceding "such retailer's license", and added "as set forth in § 57-3-212." at the end; in (b)(1), inserted "or retail license transfer" near the beginning and "or application for transfer" near the end of the first sentence, and inserted "or transferred" following "issued" and substituted "has" for "shall have" in the second sentence; in (b)(2), inserted "or transferred to or held by," following "issued"; and in (b)(3) and (b)(3)(A), inserted ", transferred to, or maintained by" following "issued to".

Effective Dates.

Acts 2018, ch.783, § 14. April 20, 2018.

Cross-References.

Nonresident seller's permittees prohibited from interest in business licensed under this section, § 57-3-604.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 8, 9, 15.

Attorney General Opinions.

The residency and corporate asset location requirements for applicants seeking a license as an alcoholic beverage wholesaler or package retailer under T.C.A. §§ 57-3-203 and 57-3-204 violate the Commerce Clause of the United States Constitution. OAG 12-59, 2012 Tenn. AG LEXIS 59 (6/6/12).

The residency requirements set forth in T.C.A. § 57-3-204(b)(2)(A), as amended by Acts 2014, ch. 554, § 27, violates the Commerce

Clause of the United States Constitution. The requirements facially discriminate against nonresidents, and the intent expressed in T.C.A. § 57-3-204(b)(4) does not establish a local purpose sufficient to justify the discriminatory licensing provisions. OAG 14-83, 2014 Tenn. AG LEXIS 86 (9/12/14).

NOTES TO DECISIONS

Analysis

1. Implied Condition of License.
2. Name in Which License Issued.
3. Conspiracy to Sell Without License.
4. Exceeding Terms of License.
5. Durational Residency Requirements Violated Dormant Commerce Clause.

1. Implied Condition of License.

A licensee to sell liquor at retail accepted his license with the implied condition that laws and regulations which would curtail it might legally be made during the term of the license. Davis v. Boyd, 192 Tenn. 409, 241 S.W.2d 510, 1951 Tenn. LEXIS 421 (1951).

2. Name in Which License Issued.

Where son operated liquor store under trade name and county and state licenses were issued in trade name and city license was issued to the mother as doing business under such trade name, claims made against the son in bankruptcy proceedings for debts incurred in trade name were valid and the fact that licenses were not issued in the name of the son did not render such contracts illegal. Robinson v. Hamilton Wholesale Liquor Co., 132 F.2d 285, 1942 U.S. App. LEXIS 2581 (6th Cir. Tenn. 1942).

3. Conspiracy to Sell Without License.

The sale of intoxicating liquors by one not licensed by the state to do so is a misdemeanor and there can be a conviction under former T.C.A. § 39-1-601 for the crime of conspiring to commit such offense. Owens v. State, 178 Tenn. 32, 154 S.W.2d 529, 1941 Tenn. LEXIS 25 (1941) (decided prior to enactment of § 39-12-103 in 1989).

4. Exceeding Terms of License.

If the commission finds that persons who have been issued a retail license have gone into the wholesale field it has the duty to call them to account for their actions, and if the proof shows that this is true it has the discretionary right to revoke their licenses. Little v. MacFarland, 206 Tenn. 665, 337 S.W.2d 233, 1960 Tenn. LEXIS 416 (1960).

In considering whether terms of licenses had been violated by holders of retail licenses commission could properly consider the definitions of "retail sale," "sale at retail," "retailer," "wholesale sale" and "sale at wholesale" as contained in former T.C.A. § 57-3-101. Little v. MacFarland, 206 Tenn. 665, 337 S.W.2d 233, 1960 Tenn. LEXIS 416 (1960).

5. Durational Residency Requirements Violated Dormant Commerce Clause.

Durational residency requirements in T.C.A. § 57-3-204(b)(2)(A), (3)(A)-(B), and (3)(D) violated dormant Commerce Clause because they were facially discriminatory by preventing out-of-state residents from obtaining retail licenses and protecting in-state residents who were retailers, and there was no evidence that Tennessee could not achieve its goals through nondiscriminatory means; those provisions were severed from Tennessee statute. Byrd v. Tenn. Wine & Spirits Retailers Ass'n, — F.3d —, 2018 FED App. 0035P, 2018 FED App. 35P, 2018 U.S. App. LEXIS 4081 (6th Cir. Feb. 21, 2018).

57-3-205. Location of retail license restricted.

(a) No license entitling the holder thereof to sell or deal in alcoholic spirituous beverages at retail shall be granted with respect to premises not situated within either a municipality as defined in § 57-3-101 or within a civil district of a county, which district shall have a population of thirty thousand (30,000) persons or more, according to the federal census for the year 1950 or any subsequent census, but which civil district shall not have lying either wholly or partially within its boundaries a municipality as defined in § 57-3-101.

(b) This section shall not be construed to apply to any civil district of any county of this state which county has a population of not more than one hundred seventy-eight thousand five hundred (178,500) nor less than one hundred seventy-eight thousand four hundred (178,400), according to the federal census of 1940 or any subsequent federal census.

History.
Acts 1939, ch. 49, § 5; C. Supp. 1950, § 6648.16 (Williams, § 6648.8); Acts 1951, ch. 52, § 2; T.C.A. (orig. ed.), § 57-118.

Compiler's Notes.
For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Textbooks.
Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 6, 8.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Right to Attack Constitutionality of Section.
3. General Services District.

1. Constitutionality.
State statutes and ordinance of the metropolitan government of Nashville and Davidson County prohibiting retail sale of packaged liquor in the general services district while permitting its sale in the urban services district were reasonable and did not violate equal protection clause. Templeton v. Metropolitan Government of Nashville & Davidson County, 650 S.W.2d 743, 1983 Tenn. App. LEXIS 699 (Tenn. Ct. App. 1983).

2. Right to Attack Constitutionality of Section.
Bill by licensee in a town not located in a civil district having a population of 30,000 or more seeking to test the constitutionality of the provisions of this section relating to the licensing of retail liquor sales in civil districts of 30,000 or more could not be maintained where holder of the license was unable to show prejudice as a result of such provision. Davis v. Boyd, 192 Tenn. 409, 241 S.W.2d 510, 1951 Tenn. LEXIS 421 (1951).

3. General Services District.
Under the express definition of T.C.A. § 57-3-205, the general services district standing alone is not a civil district within any category which would entitle it to the appointment of a commission under T.C.A. § 57-3-108 to determine whether an individual should be granted a retail liquor license. Templeton v. Metropolitan Government of Nashville & Davidson County, 650 S.W.2d 743, 1983 Tenn. App. LEXIS 699 (Tenn. Ct. App. 1983).

57-3-206. Collection and disposition of wholesale and retail dealers license fees.

It is made the duty of the commission to collect all license fees paid or due the state on account of each license issued to a wholesale or retail dealer in alcoholic spirituous beverages, or in respect to the continuance of any of such licenses. The commission shall deposit collections with the state treasurer to be earmarked for and allocated to the commission for the purpose of the administration and enforcement of the duties, powers, and functions of the commission.

History.
Acts 1939, ch. 49, § 13; mod. C. Supp. 1950, § 6648.19 (Williams, § 6648.16); impl. am. Acts 1963, ch. 257, § 22; T.C.A. (orig. ed.), § 57-119; Acts 2004, ch. 876, § 1.

57-3-207. Grape and Wine Law.

(a) This section shall be known and may be cited as the "Grape and Wine Law." This section shall prevail over any conflicting statutory provision.

(b) A winery license may be issued as provided in this section for the manufacture of alcoholic vinous beverages, as defined in § 57-3-101, upon a verified, written application to the commission on the proper form authorized to be prescribed and furnished in this section, and the application may be granted by the commission, subject to the restrictions of this chapter. Any winery license issued pursuant to this section shall authorize the holder of the license to manufacture, but not rectify, alcoholic vinous beverages, unless the

holder of the license is also a distiller or rectifier, or both, holding a license to distill or rectify, or both, alcoholic spirituous beverages, and the winery license shall authorize the holder of the license to place the alcoholic vinous beverages in containers or bottles. Out-of-state wineries may apply for and obtain a winery license issued in accordance with this section.

(c) Each applicant for a winery license issued pursuant to this section shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. The license shall not be issued until a license fee of one hundred and fifty dollars ($150) is paid to the commission by the winery, but issuance of the license is exempt from the requirements of § 57-3-106. The commission shall deposit collections with the state treasurer to be earmarked for and allocated to the commission for the purpose of the administration and enforcement of the duties, powers and functions of the commission.

(d) No winery license shall be issued except to persons who have not been convicted, and whose officers and principals have not been convicted, within a period of five (5) years preceding application of any felony or any violation of any state or federal laws relating to alcoholic beverages.

(e) Notwithstanding this section, a private individual in that person's own home may manufacture wine in an amount not in excess of that amount annually permitted as of March 22, 1973, by federal statute and regulations relative to household manufacture and consumption; provided, that the wine is for personal consumption by members of that person's household.

(f)(1) A winery licensed under this section may, to the extent permitted under federal law, serve wine, with or without charge, as samples for tasting on the premises at the winery and may sell wine at retail in sealed containers at the winery.

(2) A winery licensed under this section may donate wine without charge to nonprofit religious, educational or charitable institutions or associations.

(3) For purposes of this section, "premises" means any and all of the real property owned or leased by the winery.

(g) A winery licensed under this section may exchange wine in bulk with other wineries and the bulk exchange, whether in return for wine or other consideration, shall not be considered a sale subject to tax.

(h)(1) In addition to its own wine, a winery or farm winery permit holder is authorized to sell at retail items related to or incidental to the use, consumption, dispensing, or storage of wine on the licensed premises. Such items may include, but are not limited to:

(A) Juices or concentrates derived from juices, or any agricultural products;

(B) Items used in home winemaking;

(C) Gift or tourism related items including baskets or gift cards;

(D) Utensils and supplies related or incidental to the use, consumption, dispensing or storage of wine, including, without limitation, wine glasses, corkscrews, beverage strainers, pourers, flasks, jiggers, stirrers, wine racks, wine refrigerators, wine cellars, pouring aids, coasters, bottle stoppers, decanters, carafes, glassware, ice crushers, bottle openers, can openers, and devices to maximize oxidation in uncorked wine bottles and

other items used in connection with the consumption, storage, or dispensing of wine;

(E) Fruit, cheese, appetizers, chips, pretzels, and other snack foods or food items served to pair with wine;

(F) Nonalcoholic beverages;

(G) Ice, beverage coolers, and ice chests;

(H) Articles of clothing, accessories, and souvenir items imprinted with advertising, logos, slogans, trademarks, or messages related to wine or the winery's name;

(I) Smoking or tobacco related products; and

(J) Wine literature, cookbooks, or periodicals.

(2)(A) A winery or farm winery permit holder is not authorized to sell at retail:

(i) Distilled spirits;

(ii) Except as otherwise provided in subsection (v), wine that is not manufactured or bottled on the licensed premises, or in the case of a farm winery permit holder, wine that was not made pursuant to subsection (o); or

(iii) Beer.

(B) Nothing in this subsection (h) shall prohibit a winery or farm winery permit holder from holding a license pursuant to § 57-4-101, as authorized by subsection (s), and engaging in the activities permitted under such license.

(C) Nothing in this subsection (h) shall prohibit a winery or farm winery permit holder from holding a beer license for on-premises consumption and engaging in the activities permitted under such license.

(3)(A) A winery licensed under this section that satisfies the requirements of subdivision (h)(3)(B) may sell alcoholic beverages on the premises of the winery if the label of the alcoholic beverage product sold contains the name of the winery or is so intrinsically related to the property upon which the winery is located as to be identified as a product of or created for the winery.

(B) A winery exercising the rights conferred by subdivision (h)(3)(A) must satisfy the following requirements:

(i) The winery is located on a tract or tracts of land having at least twenty-four (24) contiguous acres;

(ii) The winery is located on property adjacent to a federal highway;

(iii) The winery is located on property with a commercial railroad track not more than two hundred fifty feet (250′) from the nearest property line;

(iv) The winery is located on property with a structure that was originally constructed prior to 1860 as a private residence;

(v) The winery is located on property that is leased or owned by a not-for-profit corporation exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code; and

(vi) The winery is located on property located within the jurisdictional limits of a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census.

(i) A winery licensed under this section located in this state may sell no more than five (5) cases or sixty (60) liters of wine to any single retail customer in one (1) day. It shall be legal for any purchaser of wine from a winery licensed under this section to transport into and within this state no more than five (5) cases or sixty (60) liters of wine in one (1) day. Any wine transported pursuant to this section must be accompanied by a bill of sale sufficiently identifying the nature, quantity, purchaser, date and place of purchase of the wine. Bills of sale purchased from out-of-state wineries licensed under this section must reflect that the wine was purchased for transport into this state and that Tennessee taxes have been paid. Any person transporting such wine in excess of five gallons (5 gals.) shall have with the shipment a receipt or other documentation demonstrating that the wine was purchased from a winery as licensed in this section.

(j) Any licensee or other person who sells, furnishes, disposes of, gives or causes to be sold, furnished, disposed of or given, any wine in this state or for transport into this state, to any person under the age of majority as established by § 57-4-203(b), commits a Class A misdemeanor.

(k) The commission is empowered and authorized to promulgate such rules and regulations as may be necessary to carry out the duties of the commission as provided in this section, including, but not limited to, procedures governing the production, sale and transportation of wine. The commissioner of revenue shall establish procedures governing the keeping of records for tax purposes and the payment of taxes by a winery licensed under this section; and for any failure to comply with the procedures, the commissioner shall notify the commission, which is authorized to revoke or suspend the license of any winery.

(*l*) It is the duty of the commissioner of agriculture to disseminate the best information available as to the methods of cultivation of crops that may be utilized in Tennessee for the production of wine and the methods of making such wines. It is also the duty of the commissioner to establish reasonable procedures requiring proper sanitary conditions about the winery and to certify that these conditions have been met before the commission issues any license. The commissioner shall establish reasonable procedures requiring the process of producing wine to be carried on under proper sanitary conditions and in a sanitary manner; and for any failure to comply with the procedures, the commissioner shall notify the commission, which is authorized to revoke or suspend the license of any winery.

(m)(1) Any nonprofit association organized to encourage and support grape growing and winemaking with ten (10) or more wineries licensed under this section as members shall be allowed to hold not more than twelve (12) wine festivals per calendar year. Each festival shall not exceed a period of seventy-two (72) hours.

(2) Any winery licensed under this section participating in a festival authorized by this subsection (m) shall be allowed to transport, serve and offer complimentary samples of their wines for tasting at the festival. The complimentary sample size shall be restricted to a one ounce (1 oz.) serving with only one (1) sample per person for each type of wine.

(3) Any winery licensed under this section participating in a festival authorized by this subsection (m) shall be allowed to transport wine

produced by that winery to sell at the festival for consumption off-premises.

(4)(A) Any nonprofit association authorized by this subsection (m) to hold a wine festival shall apply for a special occasion license as defined in § 57-4-102, in order for participating wineries licensed under this section to serve complimentary samples as described in subdivision (m)(2) and to sell wine produced by the wineries for consumption off-premises.

(B) Notwithstanding § 57-4-102(33)(A), a special occasion license issued for a wine festival authorized by this subsection (m) shall be for the duration of the festival for which application is made for a period not to exceed seventy-two (72) hours. A special occasion license issued pursuant to this subsection (m) shall only be available upon the payment of the fee as required by law for each separate day of the festival.

(C) A nonprofit association authorized to conduct a wine festival pursuant to this subsection (m) shall be permitted to hold the festival in any municipality or county of the state in the manner provided in subdivision (m)(5).

(5) A nonprofit association, as defined in subdivision (m)(1), is authorized to conduct a wine festival pursuant to this subsection (m) in a municipality or county of this state that has approved the sale of alcoholic beverages or has a licensed winery located in that municipality or county, subject to complying with all permit requirements of the municipality or county, and in all other municipalities or counties upon receiving approval of the legislative body of the municipality or county to hold such a festival at a location and in such manner authorized by such legislative body.

(n) If any provision of this section or application of this section to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to that end the provisions of this section are declared to be severable.

(o)(1) As used in this subsection (o):

(A) "Farm" means a farming operation located in Tennessee consisting of commercial vineyards, fruit orchards or fruit gardens or any combination of such farming operations;

(B) "Farm wine producer" means a farm which produces its own locally grown product from a vineyard, fruit orchard or fruit garden or any combination of such farming operations to be used in the making of wine; and

(C) "Wine" means an alcoholic beverage containing a minimum of ninety-five percent (95%) of the product of vineyards, fruit orchards or fruit gardens grown and harvested at a farm as the wine being sold by the farm wine producer.

(2) A farm wine permit may be issued as provided in this subsection (o) to a farm wine producer, upon verified, written application to the commission on the proper form authorized to be prescribed and furnished by the commission, and the application may be granted by the commission, subject to the further restrictions of this chapter, other than § 57-3-106.

(3) Each applicant for a farm wine permit shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars ($300)

when the application is submitted for review. The permit shall not be issued until a permit fee of one hundred and fifty dollars ($150) is paid to the commission by the farm wine producer, but issuance of the permit is exempt from the requirements of § 57-3-106. The commission shall deposit collections with the state treasurer to be earmarked for and allocated to the commission for the purpose of the administration and enforcement of the duties, powers and functions of the commission.

(4) The holder of a farm wine permit may:

(A) Transport or have transported produce grown on the farm to a winery licensed pursuant to subsection (b), for the manufacture, bottling and labeling of unfortified wine from such produce;

(B) Receive such wine back from the winery manufacturing, bottling and labeling the wine for the farm wine producer;

(C) Offer on the premises of the farm single servings of its wine, with or without charge, as tastings for each wine sample; and

(D) Sell at retail on the premises of the farm sealed containers of wine made from the produce of its vineyard, orchard or fruit garden in a designated building or area.

(5) Subsections (d), (h), (i), (j), (m), (n), and (q) which apply to wineries shall also apply to farm wine permittees.

(p)(1) A winery licensed under this section is authorized to receive produce from a farm wine producer grown on the farm for the purpose of manufacturing, bottling and labeling of wine for such producer. The wine label shall indicate the name of the farm where the fruit was grown and harvested and the name of the winery manufacturing, bottling and labeling such wine.

(2) Such winery shall be responsible for the payment of the state gallonage tax imposed pursuant to § 57-3-302 and the federal alcoholic beverage excise taxes due and owing on the wine bottled by the winery prior to the bottled wine leaving the winery's bonded premises.

(3) The winery is authorized to transport the wine from the winery back to the farm wine permit holder, notwithstanding § 57-3-107(b) or any other law to the contrary. It is lawful for common carriers to transport from the winery which manufactured, bottled and labeled such wine to the farm permit holder pursuant to an agreement or contract with a licensed winery.

(q)(1) A winery licensed under this section that has a total annual wine production of fifty thousand gallons (50,000 gals.) or less shall be authorized to obtain an additional self-distribution permit from the commission subject to the obligations imposed in this subsection (q).

(2) No self-distribution permit shall be issued to or held by a winery that has registered a distribution contract with a wholesaler licensed pursuant to § 57-3-203, if the terms of that contract include distribution rights for a county that is located, in whole or in part, within one hundred (100) miles of the licensed winery where the wine being distributed has been manufactured, produced, or bottled. Any winery holding a self-distribution permit that registers such a distribution contract with a wholesaler or whose total output in a calendar year exceeds fifty thousand gallons (50,000 gals.) shall cease self-distributing its wine under subdivision (q)(3) and shall promptly surrender the winery's self-distribution permit.

(3) A winery seeking a self-distribution permit under this subsection (q) may distribute not more than three thousand (3,000) cases of wine manufactured, produced, or bottled on the winery's premises to any licensee holding a license issued pursuant to chapter 4, part 1 of this title, located within one hundred (100) miles of the winery's premises where such wine has been manufactured, produced, or bottled.

(4) A winery engaged in self-distribution under this section shall be responsible for all taxes and records which are imposed upon a wholesaler under § 57-3-203 which result from any direct sales under this subsection (q).

(5) The commission shall impose no additional fee or charge for the issuance of a self-distribution permit under this section.

(r)(1) For purposes of this subsection (r), "satellite facility" means any facility or location other than the primary business location of a winery or farm wine producer.

(2) Any winery or any farm wine producer licensed by this section may conduct business at any two (2) satellite facilities in any jurisdiction where it is lawful to manufacture intoxicating liquors or intoxicating drinks pursuant to § 57-2-103(c) and (d). At its satellite facilities, the winery may conduct any business that is authorized at the licensed winery, except for the manufacturing and bottling of wine. At its satellite facilities, a farm wine producer may conduct any business that is authorized at the premises of the farm wine producer.

(3)(A) Any winery licensed by this section or any farm wine producer shall obtain a satellite permit for each satellite facility utilized by the winery or farm wine producer from the commission in order to:

(i) Serve samples with or without charge;

(ii) Sell wine for consumption on or off the permitted premises; and

(iii) Sell any other products under subsections (h) and (o).

(B) In addition to the permit authorized in subdivision (r)(3)(A), any winery licensed under this section that has a total annual wine production of fifty thousand gallons (50,000 gals.) or less or any farm wine producer licensed under this section may qualify for a satellite permit to authorize no more than three (3) such wineries, farm wine producers, or any combination thereof, to conduct business at one (1) satellite facility.

(C) Any violation of any rule or statute by a satellite facility shall be deemed to be a violation by any winery or farm winery producer that participates in a satellite facility.

(D) Any winery or farm winery producer, seeking to establish or operate a satellite facility shall disclose to the commission each winery or farm winery producer participating in the satellite facility. Any participant in a satellite facility shall provide any information requested by the commission prior to participating in the satellite facility.

(4) A satellite permit issued to a winery or farm wine producer pursuant to this subsection (r) shall only be available upon the payment of a one-time application fee to the commission of three hundred dollars ($300) per satellite location and upon the payment of an annual license fee of one hundred fifty dollars ($150).

(5)(A) Any winery or farm wine producer licensed under this section that has obtained a satellite permit and elects to charge consumers for samples may only sell such samples that are manufactured by the winery or farm wine producer. Any wine provided at the satellite facility for sales, whether for tastings, for consumption on the premises, and for consumption off the premises, shall be obtained from a wholesaler licensed pursuant to § 57-3-203.

(B) A wholesaler of the winery or farm wine producer's products may permit a winery or farm wine producer to deliver for sale products which are sold on the premises of the winery, the farm wine producer, or the satellite facility; provided, that the wholesaler permitting such direct shipment shall include the amounts delivered in its inventory, report depletions for purposes of tax collection, and be responsible for the payment of taxes of such depletions.

(s)(1) Any winery or farm wine producer licensed pursuant to this section may qualify for and hold a license under chapter 4 of this title as a restaurant or limited service restaurant; provided, that notwithstanding chapter 4 of this title related to restrictions or prohibitions on licensees under chapter 4 of this title, a restaurant or limited service restaurant may sell for off-premises consumption, wine manufactured pursuant to this section at such location or at any other restaurant or limited service restaurant licensed under chapter 4 of this title that is owned by the same person.

(2) Notwithstanding any law, rule, or regulation to the contrary, any winery or farm wine producer licensed under this section may serve wine manufactured by the winery or the farm wine producer for consumption on the premises of the winery or farm wine producer.

(t)(1) Except as provided in subdivision (t)(2), any sale of wine authorized by this section for consumption on the premises at the winery or on the premises of the farm wine producer shall be subject to taxation pursuant to § 57-4-301(c) in addition to any sales tax which is due. The taxes shall be paid and collected in the manner prescribed by § 57-4-301 and the rules of the department of revenue promulgated under the authority of that section.

(2) Nothing in this section authorizes the collection of taxes pursuant to § 57-4-301(c) for the sale of wine:

(A) As samples for tasting, with or without charge, for consumption on the premises; or

(B) At retail in sealed containers for consumption on the premises to the extent permitted under federal law.

(u) Notwithstanding the term "wine" as defined in §§ 57-3-101, 57-3-802, and 57-4-102, wineries and farm wine producers licensed under this section may label and advertise wine made from apples as cider, apple cider, or hard cider; provided, that nothing in this subsection (u) shall affect the marketing of cider products distributed as beer by wholesalers permitted under § 57-5-103.

(v)(1) Notwithstanding any other law to the contrary, a winery or farm wine permit holder may purchase or import finished wine product from another winery in this state or another state in an amount not to exceed, in the aggregate, fifty thousand gallons (50,000 gals.) per year. A winery or farm

wine permit holder that purchases or imports finished wine product under this subdivision (v)(1) may sell, distribute, serve for the purposes of samples or tastings, or otherwise use or dispose of such product in any manner that the winery or farm wine permit holder is authorized to use or dispose of wine under this section that is manufactured, bottled, or produced by the winery or farm wine permit holder.

(2) As used in this subsection (v), "finished wine product" means any wine product that is ready for use by an end user and that bears the label of the winery or farm wine permit holder that purchased or imported the finished wine product under this subsection (v).

History.

Acts 1939, ch. 49, § 9; 1949, ch. 284, §§ 4, 5; C. Supp. 1950, § 6648.14 (Williams, § 6648.12); impl. am. Acts 1963, ch. 257, § 23; Acts 1973, ch. 8, § 1; 1977, ch. 126, §§ 1, 2; T.C.A. (orig. ed.), § 57-120; Acts 1983, ch. 59, § 1; 1983, ch. 229, §§ 1-3; 1985, ch. 386, §§ 1, 3, 4; 1988, ch. 580, §§ 1-3; 1991, ch. 292, § 1; 1995, ch. 151, § 1; 2001, ch. 163, §§ 1-3; 2004, ch. 876, § 2; 2006, ch. 826, § 1; 2007, ch. 433, §§ 1, 2; 2009, ch. 273, § 1; 2009, ch. 434, § 4; 2012, ch. 691, § 1; 2014, ch. 817, § 1; 2014, ch. 1015, §§ 1-5; 2015, ch. 270, § 1; 2015, ch. 366, § 1; 2015, ch. 451, § 1; 2015, ch. 467, § 1; 2016, ch. 687, § 1; 2016, ch. 857, § 1; 2017, ch. 269, §§ 1-5; 2017, ch. 373, §§ 1, 2; 2017, ch. 411, § 1.

Code Commission Notes. The misdemeanor in this section has been designated as a Class A misdemeanor by authority of § 40-35-110, which provides that an offense designated a misdemeanor without specification as to category is a Class A misdemeanor. See also § 39-11-114.

Compiler's Notes.

The misdemeanor penalty provisions in subsection (j) may have been affected by the Criminal Sentencing Act of 1989. See §§ 39-11-114, 40-35-110, 40-35-111.

Acts 2009, ch. 273 contained a preamble which read: "WHEREAS, on October 24, 2008, in *Jelovsek, et al. v. Bredesen*, et al., the United States Court of Appeals for the Sixth Circuit held that portions of Tennessee's Grape and Wine Law is discriminatory on its face and remanded the case to the United States District Court for further proceedings; and

"WHEREAS, if Tennessee's Grape and Wine Law is left as it exists, and the district court ultimately holds that it violates the dormant commerce clause of the Constitution, which appears likely, the judicial branch of government will amend the law to make it comport with the commerce clause; and

"WHEREAS, if the General Assembly fails to address the defects in the law, the district court may strike portions of the law which would prevent wineries from operating in Tennessee;".

Pursuant to Article III, Section 18 of the Constitution of Tennessee, Acts 2014, ch. 817 took effect on April 28, 2014.

Acts 2015, ch. 270, § 2 provided that the act, which amended (t), shall apply to any sales made on or after May 24, 2014.

Acts 2015, ch. 451, § 2 provided that the act, which added (r)(3)(B) to (D), shall apply to any permit issued or renewed on or after July 1, 2015.

Cross-References.

Viticulture, title 43, ch. 30.

Penalty for Class A misdemeanor, § 40-35-111.

NOTES TO DECISIONS

1. Constitutionality.

Tennessee's ban on the direct shipment of alcoholic beverages (including wine) to consumers is valid. Jelovsek v. Bresden, 482 F. Supp. 2d 1013, 2007 U.S. Dist. LEXIS 23814 (E.D. Tenn. Mar. 30, 2007), aff'd in part and vacated in part, Jelovsek v. Bredesen, 545 F.3d 431, 2008 FED App. 0386P (6th Cir.), 2008 U.S. App. LEXIS 22295 (6th Cir. Tenn. 2008).

Tennessee's Grape and Wine Law is discriminatory on its face because it impermissibly favors Tennessee interests at the expense of interstate commerce. Jelovsek v. Bredesen, 545 F.3d 431, 2008 FED App. 386P, 2008 U.S. App. LEXIS 22295 (6th Cir. Oct. 24, 2008).

57-3-208. Certificate required — Contents — Exceptions. [Effective until July 1, 2021. See the version effective on July 1, 2021.]

(a) As a condition precedent to the issuance of a license under § 57-3-204, every applicant for a license under that section shall submit with the application to the commission a certificate signed by the county mayor or chair of the county commission in which the licensed premises are to be located if outside the corporate limits of a municipality or, if within a municipality, from the mayor or a majority of the commission, city council, or legislative body of the municipality, by whatsoever name designated, or if the municipality has no mayor, from the highest executive of the municipality.

(b)(1) The certificate must state:

(A) That the applicant or applicants who are to be in actual charge of the business have not been convicted of a felony within a ten-year period immediately preceding the date of application and, if a corporation, that the executive officers or those in control have not been convicted of a felony within a ten-year period immediately preceding the date of the application;

(B) That the applicant or applicants have secured a location for the business which complies with all restrictions of any local law, ordinance, or resolution, duly adopted by the local jurisdiction, as to the location of the business;

(C) That the applicant or applicants have complied with any local law, ordinance or resolution duly adopted by the local authorities regulating the number of retail licenses to be issued within the jurisdiction;

(D) For any applicant or applicants acquiring the right to purchase from an existing licensee and transferring the license to another location, that the new location is not within one thousand five hundred feet (1,500′) of another location engaged in the retail sale of alcoholic spirituous beverages and is located within the same jurisdiction wherein the transferor premises was located.

(2) Each applicant or officer identified in subdivision (b)(1)(A) must obtain and submit with the certificate a local and national criminal history record obtained from a third party using a multistate criminal records locator or other similar commercial nationwide database with validation. A criminal history record that indicates that the applicant or officer has not been convicted of a felony within the immediately preceding ten-year period serves as proof satisfactory that the applicant or officer has complied with subdivision (b)(1)(A).

(c) Municipalities and counties are hereby authorized to limit the location of retail liquor stores and the number of licenses issued within their jurisdictions. No local law, ordinance or resolution may limit the location and number of licenses authorized under § 57-3-204, so as to unreasonably restrict the availability of alcoholic beverages for the residents of such municipalities and counties. A local jurisdiction may impose reasonable residency requirements on any applicant. However, if a local jurisdiction does impose such residency requirements, such local jurisdiction shall not be authorized to impose any residency requirement on any applicant who has been continuously licensed pursuant to § 57-3-204 for seven (7) consecutive years.

(d) An applicant may seek review of the denial of a certificate by instituting an action in the chancery court having jurisdiction over the municipality or county within sixty (60) days of the denial.

(e) A failure on the part of the issuing authority to grant or deny the certificate within sixty (60) days of the written application for such shall be deemed a granting of the certificate.

(f) The requirement imposed by this section to submit a certificate shall not be applicable to any applicant if:

(1) The authority of the county or municipality charged with the responsibility to issue the certificate required herein shall have failed to grant or deny the certificate within sixty (60) days after written application for such certificate is filed; or

(2) The applicant submits a final order of a court holding that the denial of the required certificate was unreasonable, as established by subsections (c) and (d).

History.

Acts 1939, ch. 49, § 9a, as added by Acts 1949, ch. 284, § 5; C. Supp. 1950, § 6648.14a (Williams, § 6648.12a); Acts 1951, ch. 52, § 2; impl. am. Acts 1963, ch. 257, § 24; Acts 1976, ch. 438, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 16, 36; T.C.A. (orig. ed.), § 57-121; Acts 1980, ch. 894, § 1; 1981, ch. 84, §§ 1, 2; 1993, ch. 451, §§ 1, 2; 2003, ch. 90, § 2; 2015, ch. 269, § 2; 2017, ch. 357, § 1; 2018, ch. 783, § 12.

Compiler's Notes.

Acts 2003, ch. 90, § 2 directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

Acts 2018, ch. 783, § 14 provided that sections 7 through 12 of the act shall be repealed on July 1, 2021, and the provisions of this section and §§ 57-3-204 and 57-3-212 as they existed prior to being amended by Sections 7 through 12 of the act shall be reinstated.

Amendments.

The 2018 amendment, effective until July 1, 2021, added (b)(1)(D).

Effective Dates.

Acts 2018, ch. 783, § 14. April 20, 2018.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 6, 8.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Purpose.
3. Property Rights.
4. Applicant Requirements.
5. Denial.
6. Authority of Local Officials.
7. Effect of Municipal Regulations.
8. —Mandamus Against Local Officials.
9. —Effect as to State Regulatory Body.
10. Authority of Commission.
11. Hearing Before Commission.
12. —Review by Court.

1. Constitutionality.

State statutes and ordinance of the Metropolitan Government of Nashville and Davidson County prohibiting retail sale of packaged liquor in the general services district while permitting its sale in the urban services district were reasonable and did not violate equal protection clause. Templeton v. Metropolitan Government of Nashville & Davidson County, 650 S.W.2d 743, 1983 Tenn. App. LEXIS 699 (Tenn. Ct. App. 1983).

2. Purpose.

Decisions of the supreme court prior to the enactment of this section were to the effect that the certificate of good moral character to be issued by local authorities was a condition precedent to the issuance of a license by the commission, and evidently this section was enacted to meet these decisions. Boyd v. Burmaster, 193 Tenn. 338, 246 S.W.2d 36, 1952 Tenn. LEXIS 296 (1952).

3. Property Rights.

A person has no property right in the privilege of sale of intoxicating liquors. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

4. Applicant Requirements.

Prior misconduct involving liquor is an accepted reason for refusing to certify that an applicant will not violate liquor laws in the future, but such misconduct need not result in a formal conviction to make it a valid consideration. SPE, Inc. v. Metropolitan Government of Nashville & Davidson County, 817 S.W.2d 330, 1991 Tenn. App. LEXIS 456 (Tenn. Ct. App. 1991).

5. Denial.

Plaintiff's only means of obtaining review over city's denial of plaintiff's application for a certificate of compliance was by instituting an action in the chancery court within (60) days of the denial as required by T.C.A. § 57-3-208(d). Johnson v. Alcoholic Beverage Com., 844 S.W.2d 182, 1992 Tenn. App. LEXIS 686 (Tenn. Ct. App. 1992).

Alcoholic beverage commission did not act illegally, arbitrarily, or capriciously in refusing to renew liquor license. Johnson v. Alcoholic Beverage Com., 844 S.W.2d 182, 1992 Tenn. App. LEXIS 686 (Tenn. Ct. App. 1992).

6. Authority of Local Officials.

Local commissioners of civil district had no more authority than various municipalities of the state, and where they acted illegally in denying application for certificate of good moral character, commission had power to review their action and order issuance of liquor license to applicant. Boyd v. Burmaster, 193 Tenn. 338, 246 S.W.2d 36, 1952 Tenn. LEXIS 296 (1952).

Issuance of certificate of good moral character by local officials in order for a person to operate a retail liquor store is advisory only to the alcoholic beverage commission. Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

7. Effect of Municipal Regulations.

Applicant of retail liquor license was not entitled to issuance of certificate of good moral character for sale of liquor contrary to valid municipal ordinance regulating places of sale of liquor even though he was entitled to such certificate from standpoint of character. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

Where municipal officials, as their prime reasons for refusing to grant certificates, asserted the ordinance in question, it was a proper quasi-judicial function for the commission to determine whether or not the ordinance was in conflict with state statute on identically the same subject matter. Lakewood v. Tennessee Alcoholic Beverage Com., 219 Tenn. 510, 410 S.W.2d 897, 1967 Tenn. LEXIS 452 (1967).

8. —Mandamus Against Local Officials.

Applicant for retail liquor license may not by mandamus or otherwise compel municipal authorities to issue certificate of good moral character to operate his business at a place of his own selection even though he may be entitled to it from a standpoint of moral fitness. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

9. —Effect as to State Regulatory Body.

The commission cannot be compelled to issue license after refusal of certificate by local authorities in absence of evidence that such local authorities have acted arbitrarily and unlawfully in disapproving it. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

10. Authority of Commission.

An independent investigation by the commission of the distances of proposed locations from schools and churches is authorized by this section. Lakewood v. Tennessee Alcoholic Beverage Com., 219 Tenn. 510, 410 S.W.2d 897, 1967 Tenn. LEXIS 452 (1967).

11. Hearing Before Commission.

Where applicant for retail liquor license was refused a certificate of good moral character by city officials in 1952 and city officials failed to appear at hearing on the matter before the commission or to present any evidence or reason for refusing the certificate although they were duly notified, and license for the year 1953 was then issued to applicant, city officials were prevented by the doctrine of res judicata from presenting evidence as to matters that allegedly occurred in 1952 at hearing in 1954 before the commission on the moral character of applicant. Polsky v. Atkins, 197 Tenn. 201, 270 S.W.2d 497, 1954 Tenn. LEXIS 468 (1954).

12. —Review by Court.

The court will not substitute its judgment for that of the commission in determining whether the license should issue unless the commission acts arbitrarily and without regard for its duty. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

DECISIONS UNDER PRIOR LAW

Analysis

1. Nature of Certificate.
2. Matters Considered in Issuance of Certificate.
3. Mandamus Against Local Officials.

1. Nature of Certificate.

The certificate prescribed by former provisions of Acts 1939, ch. 49, § 8, was not merely a certificate of good moral character but also a certificate that in the opinion of the officer signing it the applicant will refrain from a violation of the statutes governing traffic in alcoholic beverages. State ex rel. Allen v. Beasley, 182 Tenn. 519, 188 S.W.2d 332, 1945 Tenn. LEXIS 247 (1945).

The certificate of the approval of the local authority was a condition precedent to the issue of the license by the commission. State ex rel. Park v. Beasley, 182 Tenn. 523, 188 S.W.2d 333, 1945 Tenn. LEXIS 248 (1945); State ex rel. Harris v. Beasley, 182 Tenn. 529, 188 S.W.2d 336, 1945 Tenn. LEXIS 249 (1945).

2. Matters Considered in Issuance of Certificate.

Certificate was not only dependent on good moral character of applicant but also freedom from past violation of liquor laws. State ex rel. Allen v. Beasley, 182 Tenn. 519, 188 S.W.2d 332, 1945 Tenn. LEXIS 247 (1945).

Issuance of the certificate provided for under former provisions of Acts 1939, ch. 49, § 8, was a matter of official discretion, and a refusal based on personal habits of petitioner and past violations of regulations and law was not an abuse of discretion. State ex rel. Park v. Beasley, 182 Tenn. 523, 188 S.W.2d 333, 1945 Tenn. LEXIS 248 (1945).

The former provisions of Acts 1939, ch. 49, § 8, imposed the duty upon local officials to consider, not only the character of the nominal applicant, but also the moral character, history and reasonably to be anticipated conduct of his past and avowedly prospective authorized agent in sole actual charge and conduct of the liquor business proposed to be transacted. State ex rel. Harris v. Beasley, 182 Tenn. 529, 188 S.W.2d 336, 1945 Tenn. LEXIS 249 (1945).

Where wife had operated liquor store prior to application for certificate in name of husband who was absent from the county and evidence showed that wife's prior operation of the store had been characterized by repeated violations of the liquor laws refusal of the certificate was proper. State ex rel. Harris v. Beasley, 182 Tenn. 529, 188 S.W.2d 336, 1945 Tenn. LEXIS 249 (1945).

3. Mandamus Against Local Officials.

Mandamus would not lie against local authorities for refusal to issue certificate if refusal was based on reasonable grounds and not arbitrary. State ex rel. Allen v. Beasley, 182 Tenn. 519, 188 S.W.2d 332, 1945 Tenn. LEXIS 247 (1945); State ex rel. Park v. Beasley, 182 Tenn. 523, 188 S.W.2d 333, 1945 Tenn. LEXIS 248 (1945).

Under former provisions of Acts 1939, ch. 49, § 8, the only method of review of refusal of local officials to issue certificate was by mandamus. State ex rel. Park v. Beasley, 182 Tenn. 523, 188 S.W.2d 333, 1945 Tenn. LEXIS 248 (1945).

57-3-208. Certificate required — Contents — Exceptions. [Effective on July 1, 2021. See the version effective until July 1, 2021.]

(a) As a condition precedent to the issuance of a license under § 57-3-204, every applicant for a license under that section shall submit with the application to the commission a certificate signed by the county mayor or chair of the county commission in which the licensed premises are to be located if outside the corporate limits of a municipality or, if within a municipality, from the mayor or a majority of the commission, city council, or legislative body of the municipality, by whatsoever name designated, or if the municipality has no mayor, from the highest executive of the municipality.

(b)(1) The certificate must state:

(A) That the applicant or applicants who are to be in actual charge of the business have not been convicted of a felony within a ten-year period immediately preceding the date of application and, if a corporation, that the executive officers or those in control have not been convicted of a felony within a ten-year period immediately preceding the date of the application;

(B) That the applicant or applicants have secured a location for the business which complies with all restrictions of any local law, ordinance, or

resolution, duly adopted by the local jurisdiction, as to the location of the business;

(C) That the applicant or applicants have complied with any local law, ordinance or resolution duly adopted by the local authorities regulating the number of retail licenses to be issued within the jurisdiction.

(2) Each applicant or officer identified in subdivision (b)(1)(A) must obtain and submit with the certificate a local and national criminal history record obtained from a third party using a multistate criminal records locator or other similar commercial nationwide database with validation. A criminal history record that indicates that the applicant or officer has not been convicted of a felony within the immediately preceding ten-year period serves as proof satisfactory that the applicant or officer has complied with subdivision (b)(1)(A).

(c) Municipalities and counties are hereby authorized to limit the location of retail liquor stores and the number of licenses issued within their jurisdictions. No local law, ordinance or resolution may limit the location and number of licenses authorized under § 57-3-204, so as to unreasonably restrict the availability of alcoholic beverages for the residents of such municipalities and counties. A local jurisdiction may impose reasonable residency requirements on any applicant. However, if a local jurisdiction does impose such residency requirements, such local jurisdiction shall not be authorized to impose any residency requirement on any applicant who has been continuously licensed pursuant to § 57-3-204 for seven (7) consecutive years.

(d) An applicant may seek review of the denial of a certificate by instituting an action in the chancery court having jurisdiction over the municipality or county within sixty (60) days of the denial.

(e) A failure on the part of the issuing authority to grant or deny the certificate within sixty (60) days of the written application for such shall be deemed a granting of the certificate.

(f) The requirement imposed by this section to submit a certificate shall not be applicable to any applicant if:

(1) The authority of the county or municipality charged with the responsibility to issue the certificate required herein shall have failed to grant or deny the certificate within sixty (60) days after written application for such certificate is filed; or

(2) The applicant submits a final order of a court holding that the denial of the required certificate was unreasonable, as established by subsections (c) and (d).

History.

Acts 1939, ch. 49, § 9a, as added by Acts 1949, ch. 284, § 5; C. Supp. 1950, § 6648.14a (Williams, § 6648.12a); Acts 1951, ch. 52, § 2; impl. am. Acts 1963, ch. 257, § 24; Acts 1976, ch. 438, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 16, 36; T.C.A. (orig. ed.), § 57-121; Acts 1980, ch. 894, § 1; 1981, ch. 84, §§ 1, 2; 1993, ch. 451, §§ 1, 2; 2003, ch. 90, § 2; 2015, ch. 269, § 2; 2017, ch. 357, § 1; 2018, ch. 783, § 12.

Compiler's Notes.

Acts 2003, ch. 90, § 2 directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

Acts 2018, ch. 783, § 14 provided that sections 7 through 12 of the act shall be repealed on July 1, 2021, and the provisions of this

section and §§ 57-3-204 and 57-3-212 as they existed prior to being amended by Sections 7 through 12 of the act shall be reinstated.

Amendments.

The 2018 amendment, effective until July 1, 2021, added (b)(1)(D) which read: "For any applicant or applicants acquiring the right to purchase from an existing licensee and transferring the license to another location, that the new location is not within one thousand five hundred feet (1,500′) of another location engaged in the retail sale of alcoholic spirituous beverages and is located within the same jurisdiction wherein the transferor premises was located."

Effective Dates.

Acts 2018, ch. 783, § 14. April 20, 2018.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 6, 8.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Purpose.
3. Property Rights.
4. Applicant Requirements.
5. Denial.
6. Authority of Local Officials.
7. Effect of Municipal Regulations.
8. —Mandamus Against Local Officials.
9. —Effect as to State Regulatory Body.
10. Authority of Commission.
11. Hearing Before Commission.
12. —Review by Court.

1. Constitutionality.

State statutes and ordinance of the Metropolitan Government of Nashville and Davidson County prohibiting retail sale of packaged liquor in the general services district while permitting its sale in the urban services district were reasonable and did not violate equal protection clause. Templeton v. Metropolitan Government of Nashville & Davidson County, 650 S.W.2d 743, 1983 Tenn. App. LEXIS 699 (Tenn. Ct. App. 1983).

2. Purpose.

Decisions of the supreme court prior to the enactment of this section were to the effect that the certificate of good moral character to be issued by local authorities was a condition precedent to the issuance of a license by the commission, and evidently this section was enacted to meet these decisions. Boyd v. Burmaster, 193 Tenn. 338, 246 S.W.2d 36, 1952 Tenn. LEXIS 296 (1952).

3. Property Rights.

A person has no property right in the privilege of sale of intoxicating liquors. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

4. Applicant Requirements.

Prior misconduct involving liquor is an accepted reason for refusing to certify that an applicant will not violate liquor laws in the future, but such misconduct need not result in a formal conviction to make it a valid consideration. SPE, Inc. v. Metropolitan Government of Nashville & Davidson County, 817 S.W.2d 330, 1991 Tenn. App. LEXIS 456 (Tenn. Ct. App. 1991).

5. Denial.

Plaintiff's only means of obtaining review over city's denial of plaintiff's application for a certificate of compliance was by instituting an action in the chancery court within (60) days of the denial as required by T.C.A. § 57-3-208(d). Johnson v. Alcoholic Beverage Com., 844 S.W.2d 182, 1992 Tenn. App. LEXIS 686 (Tenn. Ct. App. 1992).

Alcoholic beverage commission did not act illegally, arbitrarily, or capriciously in refusing to renew liquor license. Johnson v. Alcoholic Beverage Com., 844 S.W.2d 182, 1992 Tenn. App. LEXIS 686 (Tenn. Ct. App. 1992).

6. Authority of Local Officials.

Local commissioners of civil district had no more authority than various municipalities of the state, and where they acted illegally in denying application for certificate of good moral character, commission had power to review their action and order issuance of liquor license to applicant. Boyd v. Burmaster, 193 Tenn. 338, 246 S.W.2d 36, 1952 Tenn. LEXIS 296 (1952).

Issuance of certificate of good moral character by local officials in order for a person to operate a retail liquor store is advisory only to the alcoholic beverage commission. Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

7. Effect of Municipal Regulations.

Applicant of retail liquor license was not entitled to issuance of certificate of good moral character for sale of liquor contrary to valid municipal ordinance regulating places of sale of liquor even though he was entitled to such certificate from standpoint of character. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage

Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

Where municipal officials, as their prime reasons for refusing to grant certificates, asserted the ordinance in question, it was a proper quasi-judicial function for the commission to determine whether or not the ordinance was in conflict with state statute on identically the same subject matter. Lakewood v. Tennessee Alcoholic Beverage Com., 219 Tenn. 510, 410 S.W.2d 897, 1967 Tenn. LEXIS 452 (1967).

8. —Mandamus Against Local Officials.

Applicant for retail liquor license may not by mandamus or otherwise compel municipal authorities to issue certificate of good moral character to operate his business at a place of his own selection even though he may be entitled to it from a standpoint of moral fitness. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

9. —Effect as to State Regulatory Body.

The commission cannot be compelled to issue license after refusal of certificate by local authorities in absence of evidence that such local authorities have acted arbitrarily and unlawfully in disapproving it. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

10. Authority of Commission.

An independent investigation by the commission of the distances of proposed locations from schools and churches is authorized by this section. Lakewood v. Tennessee Alcoholic Beverage Com., 219 Tenn. 510, 410 S.W.2d 897, 1967 Tenn. LEXIS 452 (1967).

11. Hearing Before Commission.

Where applicant for retail liquor license was refused a certificate of good moral character by city officials in 1952 and city officials failed to appear at hearing on the matter before the commission or to present any evidence or reason for refusing the certificate although they were duly notified, and license for the year 1953 was then issued to applicant, city officials were prevented by the doctrine of res judicata from presenting evidence as to matters that allegedly occurred in 1952 at hearing in 1954 before the commission on the moral character of applicant. Polsky v. Atkins, 197 Tenn. 201, 270 S.W.2d 497, 1954 Tenn. LEXIS 468 (1954).

12. —Review by Court.

The court will not substitute its judgment for that of the commission in determining whether the license should issue unless the commission acts arbitrarily and without regard for its duty. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

DECISIONS UNDER PRIOR LAW

Analysis

1. Nature of Certificate.
2. Matters Considered in Issuance of Certificate.
3. Mandamus Against Local Officials.

1. Nature of Certificate.

The certificate prescribed by former provisions of Acts 1939, ch. 49, § 8, was not merely a certificate of good moral character but also a certificate that in the opinion of the officer signing it the applicant will refrain from a violation of the statutes governing traffic in alcoholic beverages. State ex rel. Allen v. Beasley, 182 Tenn. 519, 188 S.W.2d 332, 1945 Tenn. LEXIS 247 (1945).

The certificate of the approval of the local authority was a condition precedent to the issue of the license by the commission. State ex rel. Park v. Beasley, 182 Tenn. 523, 188 S.W.2d 333, 1945 Tenn. LEXIS 248 (1945); State ex rel. Harris v. Beasley, 182 Tenn. 529, 188 S.W.2d 336, 1945 Tenn. LEXIS 249 (1945).

2. Matters Considered in Issuance of Certificate.

Certificate was not only dependent on good moral character of applicant but also freedom from past violation of liquor laws. State ex rel. Allen v. Beasley, 182 Tenn. 519, 188 S.W.2d 332, 1945 Tenn. LEXIS 247 (1945).

Issuance of the certificate provided for under former provisions of Acts 1939, ch. 49, § 8, was a matter of official discretion, and a refusal based on personal habits of petitioner and past violations of regulations and law was not an abuse of discretion. State ex rel. Park v. Beasley, 182 Tenn. 523, 188 S.W.2d 333, 1945 Tenn. LEXIS 248 (1945).

The former provisions of Acts 1939, ch. 49, § 8, imposed the duty upon local officials to consider, not only the character of the nominal applicant, but also the moral character, history and reasonably to be anticipated conduct of his past and avowedly prospective authorized agent in sole actual charge and conduct of the liquor business proposed to be transacted. State ex rel. Harris v. Beasley, 182 Tenn. 529, 188 S.W.2d 336, 1945 Tenn. LEXIS 249 (1945).

Where wife had operated liquor store prior to application for certificate in name of husband who was absent from the county and evidence showed that wife's prior operation of the store

had been characterized by repeated violations of the liquor laws refusal of the certificate was proper. State ex rel. Harris v. Beasley, 182 Tenn. 529, 188 S.W.2d 336, 1945 Tenn. LEXIS 249 (1945).

3. Mandamus Against Local Officials.

Mandamus would not lie against local authorities for refusal to issue certificate if refusal was based on reasonable grounds and not arbitrary. State ex rel. Allen v. Beasley, 182 Tenn. 519, 188 S.W.2d 332, 1945 Tenn. LEXIS 247 (1945); State ex rel. Park v. Beasley, 182 Tenn. 523, 188 S.W.2d 333, 1945 Tenn. LEXIS 248 (1945).

Under former provisions of Acts 1939, ch. 49, § 8, the only method of review of refusal of local officials to issue certificate was by mandamus. State ex rel. Park v. Beasley, 182 Tenn. 523, 188 S.W.2d 333, 1945 Tenn. LEXIS 248 (1945).

57-3-209. Collectors of containers that hold alcoholic beverages.

(a) For purposes of this section:

(1) "Alcoholic beverage collector" means an individual who collects commemorative bottles containing alcoholic beverages, wine or distilled spirits, where the individual displays the collection in a location available to the public, either by appointment or on a regular schedule, and who sells collectible alcoholic beverages for the purpose of collection, without the intent that the collectible alcoholic beverage be consumed; and

(2) "Collectible alcoholic beverage" means an alcoholic beverage, distilled spirit or wine in a unique or commemorative bottle, decanter or other container, not generally available at a licensee holding a permit issued pursuant to § 57-3-204.

(b) Any individual qualifying as an alcoholic beverage collector may apply to the commission for a license as an alcoholic beverage collector, authorizing that individual to purchase wine, distilled spirits and other alcoholic beverages from any entity authorized to sell such products and shall be authorized to sell, in a face to face transaction only, collectible alcoholic beverages, as defined in this section, to any person twenty-one (21) years of age or older. The license may be issued notwithstanding the requirements of § 57-3-106.

(c) No license shall be issued under this section to any person who has an interest, direct or indirect, in any business holding a license issued under chapter 2 of this title or pursuant to § 57-3-202, § 57-3-203, § 57-3-204, § 57-3-207, § 57-3-218 or § 57-4-101.

(d) Any sale of any alcoholic beverage, wine or distilled spirit by an individual licensed under this section shall be presumed not to be a sale of a collectible alcoholic beverage if the price of the sale is not at least three hundred percent (300%) of the price of the same brand, vintage, quantity and type of alcoholic beverage, distilled spirit or wine as is available at any licensee holding a license pursuant to § 57-3-204. The alcoholic beverage collector shall have the burden of proving that any sale authorized under this section satisfies the requirements of this section.

(e)(1) An alcoholic beverage collector shall be responsible for remitting all sales taxes due resulting from any sale by the collector under this section. Where the collector cannot demonstrate that the collectible alcoholic beverage was purchased from a licensee holding a license pursuant to § 57-3-204, the collector shall also pay the taxes imposed pursuant to § 57-3-302.

(2) The taxes levied on sales made by an alcoholic beverage collector as authorized by this section shall become due and payable on the first day of each month following the month when the sales occur and shall become

delinquent if not paid on or before the twentieth day of each following month. For the purpose of ascertaining the amount of tax payable, it is the duty of each alcoholic beverage collector to transmit to the commissioner of revenue a return on forms prescribed by the commissioner.

(f) Each applicant for an alcoholic beverage collector's license under this section shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. An alcoholic beverage collector's license under this section shall not be issued until the applicant has paid to the commission the annual license fee of one thousand dollars ($1,000).

History.
Acts 2009, ch. 484, § 1; 2011, ch. 451, § 6.

Compiler's Notes.
Former § 57-3-209 (Acts 1939, ch. 49, § 14; C. Supp. 1950, § 6648.17; T.C.A. (orig. ed.), § 57-122), concerning bonds of licensees, was repealed by Acts 1991, ch. 514, § 1.

57-3-210. Restrictions on license holders — Employees — Penalties.

(a) The license fee for every license issued under this chapter shall be payable by the person making application for such license and to whom it is issued, and no other person shall pay for any license issued under such sections. In addition to all other penalties provided in this chapter, a violation of this section shall authorize and require the revocation of the license, the fee for which was paid by another, and also the revocation of the license, if any, of the person so paying for the license of another.

(b)(1) No wholesaler's or retailer's license shall be issued to a person who is a holder of a public office, either appointive or elective, or who is a public employee, either national, state, city or county. It is unlawful for any such person to have any interest in such wholesale or retail business, directly or indirectly, either proprietary or by means of any loan, mortgage, or lien, or to participate in the profits of any such business;

(2) The foregoing shall not apply to uncompensated appointees to municipal boards and commissions where the boards or commissions on which such appointees serve have no duty to vote for, overlook, or in any manner superintend the sale of alcoholic beverages.

(c) No wholesaler or retailer shall be a person who has been convicted of a felony involving moral turpitude, within ten (10) years prior to the time the person or the concern with which the person is connected shall receive a license; provided, however, that this subsection (c) shall not apply to any person who has been so convicted, but whose rights of citizenship have been restored or judgment of infamy has been removed by a court of competent jurisdiction; and in the case of any such conviction occurring after a license has been issued and received, the license shall immediately be revoked, if such convicted felon be an individual licensee, and if not, the partnership, corporation or association with which the felon is connected shall immediately discharge the felon.

(d) None of the licenses or permits provided by this chapter, or which may be issued thereunder, shall under any condition be issued to any person who, within ten (10) years preceding application for such license or permit shall

have been convicted of any offense under this title or of any similar law of any other state or of the United States prohibiting or regulating the sale, possession, transportation, storing, manufacturing, or otherwise handling intoxicating liquors or who has, during such period, been engaged in business alone or with others, in violation of any of such laws or rules and regulations promulgated pursuant thereto, as they existed on March 2, 1939, or as they existed or may exist thereafter.

(e) No manufacturer, brewer or wholesaler shall have any interest in the business or building containing licensed premises of any other person having a license under this chapter, or in the fixtures of any such person.

(f)(1) It is unlawful for any person to have ownership in, or participate, in, either directly or indirectly, the profits of any wholesale or retail business licensed under this chapter, unless the interest in such business and the nature, extent and character thereof shall appear on the application; or if the interest is acquired after the issuance of a license, unless it shall be fully disclosed to the commission and approved by it. Where such interest is owned by such person on or before the application for any license, the burden shall be upon such person to see that this section is fully complied with, whether the person personally signs or prepares the application, or whether the same is prepared by another; or if such interest is acquired after the issuance of the license, the burden of such disclosure of the acquisition of such interest shall be upon both the seller and the purchaser.

(2) A violation of this subsection (f) is a Class C misdemeanor.

(g) No person shall be employed in the storage, sale or distribution of alcoholic beverages except a citizen of the United States.

(h) No manufacturer, wholesaler or retailer, or any employee thereof, engaged in the physical manufacture, storage, sale or distribution of alcoholic beverages shall be a person under eighteen (18) years of age, and it is unlawful for any wholesaler or retailer to employ any person under eighteen (18) years of age for the physical storage, sale, or distribution of alcoholic beverages, or to permit any such person under such age on its place of business to engage in the manufacture, storage, sale or distribution of alcoholic beverages.

(i) No manufacturer, wholesaler or retailer shall employ in the manufacture, storage, sale or distribution of alcoholic beverages, any person who, within ten (10) years prior to the date of employment, shall have been convicted of a felony involving moral turpitude, and in case an employee should be so convicted, the employee shall immediately be discharged; provided, however, that this subsection (i) shall not apply to any person who has been so convicted, but whose rights of citizenship have been restored, or judgment of infamy has been removed by a court of competent jurisdiction.

(j) This section shall be in addition to any other restriction or condition which may be contained elsewhere in this chapter or chapters 1 and 9 of this title.

History.

Acts 1939, ch. 49, §§ 5, 12; 1945, ch. 167, § 7; 1949, ch. 284, § 7; C. Supp. 1950, §§ 6648.15, 6648.16 (Williams, §§ 6648.8, 6648.14, 6648.15); Acts 1963, ch. 257, § 26; 1971, ch. 162, § 2; 1971, ch. 169, § 1; impl. am. Acts 1979, ch. 413, §§ 3, 4; T.C.A. (orig. ed.), § 57-123; Acts 1989, ch. 591, § 113; 2006, ch. 616, § 2.

Sentencing Reform Notes. A penalty provided in this section was changed to a Class C

misdemeanor on November 1, 1989. See Acts 1989, ch. 591, § 113, and §§ 40-35-110, 40-35-111.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

Textbooks.
Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 11, 15.

Law Reviews.
Constitutional Protection of Aliens, 40 Tenn. L. Rev. 235.

Attorney General Opinions.
Restriction on licensee holding public office deemed constitutional, OAG 94-145 (12/29/94).

NOTES TO DECISIONS

Analysis

1. Interest in Other Business.
2. Undisclosed Coownership.

1. Interest in Other Business.
Evidence that person holding 50 percent of stock in wholesale liquor business made loan to son who bought into retail liquor store and to owner of retail liquor store justified revocation of wholesale license on ground that licensee had interest in retail liquor business. Bluff City Beverage Co. v. MacFarland, 208 Tenn. 340, 345 S.W.2d 896, 1961 Tenn. LEXIS 292 (1961).

2. Undisclosed Coownership.
Where coowner of a liquor store did not disclose fact of coownership on application for liquor license to alcoholic beverage commission, and application represented that store was a sole proprietorship, coownership was illegal under T.C.A. § 57-3-210(f). Bubis v. Blanton, 885 F.2d 317, 1989 U.S. App. LEXIS 13732 (6th Cir. Tenn. 1989).

57-3-211. Display of license, rules and regulations.

Any person granted a license to carry on any of the businesses or undertakings contemplated by this chapter shall, before being qualified to do business, display and post, and keep displayed and posted, in the most conspicuous place on the premises, such license, and shall promptly procure and keep at the place of business a copy of the rules and regulations promulgated by the commission.

History.
Acts 1939, ch. 49, § 14; C. Supp. 1950, § 6648.17; impl. am. Acts 1963, ch. 257, § 27; T.C.A. (orig. ed.), § 57-124.

57-3-212. Transfer of permits restricted. [Effective until July 1, 2021. See the version effective on July 1, 2021.]

(a) The holder of a license may not sell, assign, or transfer such license to any other person other than to a person that the commission has approved pursuant to § 57-3-204. Any license issued or approved for transfer shall be good and valid only for the twelve (12) months after the same was issued or approved for transfer by the commission. The license proposed to be transferred may be for the same location or, with commission approval, transferred from one (1) location to another location.

(b) Licensees who are serving in the military forces of the United States in time of war may appoint an agent to operate under the license of the licensee during the absence of the licensee. In such instances, the license shall continue to be carried and renewed in the name of the owner. The agent of the licensee shall conform to all the requirements of a licensee under this chapter, including the furnishing of a certificate as provided under § 57-3-208. No person who is ineligible to obtain a license under this chapter shall be eligible to serve as the agent of a licensee under this section.

(c) Except as expressly authorized, there shall be no transfer of any permit

from the holder thereof to another, nor, except in special instances to be fixed by rule or regulation of the commission, any transfer thereof from one (1) location to another.

History.

Acts 1939, ch. 49, §§ 5, 14; 1943, ch. 98, § 1; C. Supp. 1950, §§ 6648.16, 6648.17 (Williams, §§ 6648.8, 6648.17); impl. am. Acts 1963, ch. 257, § 28; T.C.A. (orig. ed.), § 57-125; Acts 1981, ch. 152, § 1; 2018, ch. 783, § 11.

Compiler's Notes.

Acts 2018, ch. 783, § 14 provided that sections 7 through 12 of the act shall be repealed on July 1, 2021, and the provisions of this section and §§ 57-3-204 and 57-3-208 as they existed prior to being amended by Sections 7 through 12 of the act shall be reinstated.

Amendments.

The 2018 amendment, effective until July 1, 2021, rewrote (a) which read, "(a) The holder of a license may not sell, assign or transfer such license to any other person, and such license shall be good and valid only for the twelve (12) months after the same was issued."

Effective Dates.

Acts 2018, ch. 783, § 14. April 20, 2018.

NOTES TO DECISIONS

1. Transfer of License to New Location.

There is no absolute right for the holder of a license at one prescribed location to transfer that license to another location. Metropolitan Government of Nashville & Davidson County v. Shacklett, 554 S.W.2d 601, 1977 Tenn. LEXIS 640 (Tenn. 1977).

57-3-212. Transfer of permits restricted. [Effective on July 1, 2021. See the version effective until July 1, 2021.]

(a) The holder of a license may not sell, assign or transfer such license to any other person, and such license shall be good and valid only for the twelve (12) months after the same was issued.

(b) Licensees who are serving in the military forces of the United States in time of war may appoint an agent to operate under the license of the licensee during the absence of the licensee. In such instances, the license shall continue to be carried and renewed in the name of the owner. The agent of the licensee shall conform to all the requirements of a licensee under this chapter, including the furnishing of a certificate as provided under § 57-3-208. No person who is ineligible to obtain a license under this chapter shall be eligible to serve as the agent of a licensee under this section.

(c) Except as expressly authorized, there shall be no transfer of any permit from the holder thereof to another, nor, except in special instances to be fixed by rule or regulation of the commission, any transfer thereof from one (1) location to another.

History.

Acts 1939, ch. 49, §§ 5, 14; 1943, ch. 98, § 1; C. Supp. 1950, §§ 6648.16, 6648.17 (Williams, §§ 6648.8, 6648.17); impl. am. Acts 1963, ch. 257, § 28; T.C.A. (orig. ed.), § 57-125; Acts 1981, ch. 152, § 1; 2018, ch. 783, § 11.

Compiler's Notes.

Acts 2018, ch. 783, § 14 provided that sections 7 through 12 of the act shall be repealed on July 1, 2021, and the provisions of this section and §§ 57-3-204 and 57-3-208 as they existed prior to being amended by Sections 7 through 12 of the act shall be reinstated.

Amendments.

The 2018 amendment, effective until July 1, 2021, rewrote (a) to read, "The holder of a license may not sell, assign, or transfer such license to any other person other than to a person that the commission has approved pursuant to § 57-3-204. Any license issued or approved for transfer shall be good and valid only for the twelve (12) months after the same was issued or approved for transfer by the commission. The license proposed to be transferred may be for the same location or, with commission approval, transferred from one (1) location to another location."

Effective Dates.
Acts 2018, ch. 783, § 14. April 20, 2018.

NOTES TO DECISIONS

1. Transfer of License to New Location.
There is no absolute right for the holder of a license at one prescribed location to transfer that license to another location. Metropolitan Government of Nashville & Davidson County v. Shacklett, 554 S.W.2d 601, 1977 Tenn. LEXIS 640 (Tenn. 1977).

57-3-213. Expiration of licenses — Renewal.

(a) Each license shall expire twelve (12) months following the date of its issuance. The commission is authorized to issue renewal licenses for all qualified persons licensed as of July 1, 1981 for a period of time greater than three (3) months but less than a year so as to distribute expiration dates throughout the year, for the year following July 1, 1981 only. The license fee or the proportionate part thereof prescribed by this chapter shall be paid in advance at the time the application for renewal is made as provided by this chapter.

(b) Each license issued pursuant to this chapter may be renewed upon application therefor by the licensee. The renewal application shall be accompanied by the payment of the annual fee for such license. Each license shall automatically expire twelve (12) months from the date of its issuance unless the licensee has filed a renewal application and paid the annual license fee or privilege tax required by this title.

(c) The commission shall consider the application with all other evidence which it may obtain by investigation or otherwise in determining whether the license is to be renewed. The commission shall make such order, as the entire record justifies, granting or refusing the renewal application, and such order shall be effective from its date. If the license is not renewed, the applicant is entitled to the hearing and notice requirements as set out in § 57-3-214.

(d) In addition to these requirements the application for license renewal shall be accompanied by a certificate as set forth in § 57-3-208, which certificate shall be valid for two (2) years. A new certificate shall be required every other year, to be submitted with the application for renewal.

History.
Acts 1939, ch. 49, § 14; 1949, ch. 284, § 6; C. Supp. 1950, § 6648.17; Acts 1951, ch. 52, § 5; impl. am. Acts 1963, ch. 257, § 29; Acts 1976, ch. 438, § 1; T.C.A. (orig. ed.), § 57-126; Acts 1981, ch. 152, § 2; 1982, ch. 577, § 1; 1985, ch. 76, § 1.

Textbooks.
Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 5, 6, 8, 22.

Law Reviews.
Local Government Law — 1956 Tennessee Survey (Joseph Martin, Jr.), 9 Vand. L. Rev. 1032.

NOTES TO DECISIONS

Analysis

1. Granting of Licenses.
2. Power of Commission.
3. —Effect of Actions of Local Officials.
4. Review of Commission's Actions.

1. Granting of Licenses.

The granting of liquor licenses by the state does not preclude municipal authorities from making reasonable regulations as to sale or protect the holder from police regulations which are not unreasonable or oppressive. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

2. Power of Commission.

The commission has full authority under this section to determine if municipal officials acted arbitrarily in refusing certificate of good moral character. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

3. —Effect of Actions of Local Officials.

The commission cannot be compelled to issue license after refusal of certificate by local authorities in absence of evidence that such local authorities have acted arbitrarily and unlawfully in disapproving it. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

4. Review of Commission's Actions.

The court will not substitute its judgment for that of the commission in determining whether the license should issue unless the commission acts arbitrarily and without regard for its duty. Safier v. Atkins, 199 Tenn. 574, 288 S.W.2d 441, 1956 Tenn. LEXIS 355 (1956), overruled in part, Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

57-3-214. Revocation, suspension or denial of license or permit.

(a) Whenever, under this chapter, the commission is authorized to revoke a license or permit issued by it, except in those cases where revocation is mandatory, it may, if, in its discretion, it feels that revocation of the license or permit is too drastic a penalty, suspend the license or permit, and the procedure for such suspension and the review of such suspension order shall be the same as that prescribed herein for revocation of licenses or permits issued under this chapter.

(b) If a revocation of license is being contemplated with respect to a retailer's license on premises owned by a person, firm or corporation not the licensee, a copy of the notice sent to the licensee shall also be sent to the owner at the address on record with the commission.

(c) The commission or other employee designated by the commission is empowered to subpoena witnesses and compel their attendance and the production of records, memoranda, papers and other documents at any hearing authorized under this section.

(d) At all hearings provided for herein, the commission shall provide a stenographer to take a stenographic record of the evidence adduced at such hearing. The applicant, licensee, permittee, or protestant shall be entitled to a copy of the stenographic record, upon application thereof, and upon paying the reasonable cost thereof to be fixed by the commission. The commission may require the applicant to bear the costs of any hearing required on the application including any fees to court reporter and preparation and copying of a transcript or stenographic record of such hearing. All such costs must be paid by the applicant before it may receive its license.

(e) No judge of any court shall have the authority to supersede, stay or enjoin any order of revocation of the commission issued pursuant to a hearing

authorized under this section, but such order shall remain in full force and effect until the final decision by the supreme court except where the judgment of the circuit court is unappealed from and has become a final judgment.

History.

Acts 1939, ch. 49, § 14; 1941, ch. 113, § 1; 1945, ch. 85, §§ 1, 2; 1949, ch. 284, § 8; C. Supp. 1950, § 6648.17; impl. am. Acts 1963, ch. 257, § 30; Acts 1970, ch. 469, § 1; 1977, ch. 461, § 2; T.C.A. (orig. ed.), § 57-127; Acts 1981, ch. 449, § 2; 1981, ch. 465, §§ 1-3; 1982, ch. 877, § 1; 1986, ch. 738, § 3.

Compiler's Notes.

To the extent that they conflict or are inconsistent with the Uniform Administrative Procedures Act, compiled in title 4, ch. 5, the provisions in this section for judicial review of the commission's orders are superseded and repealed. Metropolitan Gov't v. Shacklett, 554 S.W.2d 601 (Tenn. 1977).

This section may be affected by T.R.A.P 24.

Cross-References.

Gifts or bribes to commission members, mandatory revocation, § 57-1-110.

Name on delinquent tax report three times in year, mandatory revocation, § 57-1-207.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 8, 9.

Law Reviews.

Methods of Judicial Review over Administrative Actions in Tennessee, 13 Mem. St. U.L. Rev. 657 (1984).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Revocation of License.
3. Review of Action of Commission.

1. Constitutionality.

Provision that no revocation order issued by the commission was to be superseded until final judgment by the supreme court did not violate Tenn. Const., art. VI, § 8, or art. VI, § 10. Terry v. Evans, 189 Tenn. 345, 225 S.W.2d 255, 1949 Tenn. LEXIS 436 (1949).

2. Revocation of License.

A license for a fixed period should not be withdrawn or canceled during the period unless there is fault on the part of the person holding the license. Wise v. McCanless, 183 Tenn. 107, 191 S.W.2d 169, 1945 Tenn. LEXIS 278 (1945).

Commission had discretionary authority to revoke licenses of retailers who were doing a wholesale business. Little v. MacFarland, 206 Tenn. 665, 337 S.W.2d 233, 1960 Tenn. LEXIS 416 (1960).

Action by commission to revoke licenses was not a criminal proceeding but was purely to show that holders of licenses had not complied with agreement with the state made through the commission. Little v. MacFarland, 206 Tenn. 665, 337 S.W.2d 233, 1960 Tenn. LEXIS 416 (1960).

In proceeding to revoke licenses of retailers for doing a wholesale business, commission could take into account the fact that none of the parties took the stand to refute, explain or amplify the evidence presented. Little v. MacFarland, 206 Tenn. 665, 337 S.W.2d 233, 1960 Tenn. LEXIS 416 (1960).

3. Review of Action of Commission.

Writ of certiorari to review action of commission only brought up question of whether it exceeded its authority or acted illegally, arbitrarily or fraudulently; and if material evidence supported its finding, such finding would be sustained by the court. Little v. MacFarland, 206 Tenn. 665, 337 S.W.2d 233, 1960 Tenn. LEXIS 416 (1960).

A case before the court pursuant to writ of certiorari raises only the questions of action beyond jurisdiction, or illegal, arbitrary or fraudulent actions. Chattanooga v. Tennessee Alcoholic Beverage Com., 525 S.W.2d 470, 1975 Tenn. LEXIS 658 (Tenn. 1975).

Cases may be brought directly to the chancery court for review in the first instance pursuant to the administrative procedures act. Metropolitan Government of Nashville & Davidson County v. Shacklett, 554 S.W.2d 601, 1977 Tenn. LEXIS 640 (Tenn. 1977).

Where applications for liquor licenses were considered by the alcoholic beverage commission after the effective date of the Uniform Administrative Procedures Act, that act superseded and repealed the provisions for judicial review of the commission's orders to the extent of any conflict or inconsistency in the two sets of statutory provisions. Metropolitan Government of Nashville & Davidson County v. Shacklett, 554 S.W.2d 601, 1977 Tenn. LEXIS 640 (Tenn. 1977).

57-3-215. New license after revocation.

(a) Where a license is revoked, no new license shall be issued to permit the sale of alcoholic beverages on the same premises until after the expiration of one (1) year from the date such revocation becomes final and effective.

(b) If the premises are owned by a person, firm or corporation not the licensee, the commission may, in its discretion, waive subsection (a) or reduce the time within which no new license may be granted with respect to the same premises.

History.
Acts 1945, ch. 167, § 2; C. Supp. 1950, § 6648.16 (Williams, § 6648.8); Acts 1977, ch. 461, § 3; T.C.A. (orig. ed.), § 57-128.

57-3-216. Federal license as evidence of sales.

The possession of any federal license to sell alcoholic beverages defined in § 57-3-101, without the corresponding requisite state license, shall in all cases be prima facie evidence that the holder of such federal license is selling alcoholic beverages in violation of the terms of this chapter.

History.
Acts 1939, ch. 49, § 14; C. Supp. 1950, § 6648.17; T.C.A. (orig. ed.), § 57-129.

57-3-217. Direct shipper's license.

(a) Any person, firm or corporation that holds a federal basic permit pursuant to the Federal Alcohol Administration Act (27 U.S.C. § 201 et seq.), and is in the business of manufacturing, bottling or rectifying wine may apply to the commission for a direct shipper's license under this section. Applicants for a direct shipper's license shall submit to the commission a copy of the federal basic permit and a permit for the manufacturing, bottling, or rectification of wine from the state where such wine is produced.

(b) A direct shipper, meeting the requirements of this section, shall be authorized to make sales and delivery of wine, as defined in § 57-3-101, by common carrier to the citizens of this state over the age of twenty-one (21) who have purchased the wine directly from the direct shipper, subject to the limitations and requirements imposed by this section.

(c) As a condition to the issuance of a direct shipper's license as authorized in this section, an applicant for the license must satisfy the following conditions:

(1) Pay to the commission a one-time nonrefundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. A direct shipper's license under this section shall not be issued until the applicant has paid to the commission the annual license fee of one hundred fifty dollars ($150);

(2) Execute a consent to jurisdiction and venue of all actions brought before the commission, any state agency or the courts of this state, such that any and all hearings, appeals and other matters relating to the license of the direct shipper shall be held in this state;

(3) Acknowledge, in writing, that it will contract only with common carriers that agree that any delivery of wine made in this state shall be by

face-to-face delivery and that deliveries will only be made to individuals who demonstrate that the individuals are over twenty-one (21) years of age and the individuals sign upon receipt of the wine.

(d)(1) No direct shipper may ship more than a total of nine (9) liters of wine to any individual during any calendar month nor shall the shipper ship more than twenty-seven (27) liters of wine to any individual in any calendar year.

(2) Any shipment of wine pursuant to this section shall be made only in containers that clearly indicate on the exterior of the container, visible to a person at least three feet (3′) away, that the container "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY".

(e)(1) A direct shipper shall be responsible for remitting all sales taxes due resulting from any sale made under this section. In addition to all sales taxes imposed upon such sale, a direct shipper shall remit the gallonage tax as imposed by § 57-3-302.

(2) The taxes levied on sales made by a direct shipper as authorized by this section shall become due and payable on the first day of each month following the month during which the sales occur, and shall become delinquent if not paid on or before the twentieth day of each such following month. For the purpose of ascertaining the amount of tax due, it is the duty of any direct shipper licensed pursuant to this section to transmit to the commissioner of revenue appropriate returns on forms prescribed by the commissioner.

(3) Upon request of the commission or its designated agent, any direct shipper licensed pursuant to this section shall provide to the commission, under penalty of perjury, a list of any wine shipped to an address within this state, including the addressee.

(4) The commission may enforce the requirements of this section by administrative action, may suspend or revoke a direct shipper's license and may accept an offer in compromise in lieu of suspension.

(5) A direct shipper that is found to have violated this title, in addition to any fine imposed by the commission, shall reimburse the commission for all costs incurred in connection with the investigation and administrative action, including the out-of-pocket costs and reasonable personnel costs.

(6) No direct shipper may avoid liability under this section by subcontracting with a third party to perform its obligations required pursuant to this section.

(f) The commission and the department of revenue are authorized to promulgate rules and regulations that may be necessary to implement this section, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(g)(1) It is an offense for a person who does not possess a direct shipper's license to ship wine to residents of this state.

(2) A violation of subdivision (g)(1) is a Class E felony, punishable by a fine only.

(h)(1) Each common carrier that contracts with a direct shipper under this section for delivery of wine, beer, or other alcoholic beverages into this state shall prepare and file monthly with the department of revenue a report of

known wine, beer, or other alcoholic beverage shipments containing the name of the common carrier making the report, the period of time covered by the report, the name and business address of the consignor, the name and address of each consignee, the weight of the package delivered to each consignee, a unique tracking number, and the date of delivery. Reports received by the department of revenue must be made available to the public pursuant to the open records law, compiled in title 10, chapter 7.

(2) Upon the request of the commissioner of revenue, any records supporting the report must be made available to the department of revenue within a reasonable time after the commissioner makes a written request for such records. Any records containing information relating to such reports must be retained and preserved for a period of two (2) years, unless destruction of the records prior to the end of such retention period is authorized in writing by the department of revenue. Such records must be open and available for inspection by the department of revenue upon written request. Reports must also be made available to any law enforcement agency or regulatory body of any local government in this state in which the common carrier making the report resides or does business.

(3) Any common carrier that willfully fails to make reports in accordance with this section or that violates any rules of the department of revenue for the administration and enforcement of this section is subject to a notification of violation. If a common carrier continually fails to make reports, the common carrier may be fined in an amount not to exceed five hundred dollars ($500) for each delivery not reported to the department of revenue. Unpaid fines assessed under this subdivision (h)(3) must be collected in accordance with title 67, chapter 1.

(4) This subsection (h) does not apply to common carriers regulated under 49 U.S.C. §§ 10101 et seq., or to rail trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service, as defined in 49 CFR § 1090.1, or highway TOFC/COFC service provided by a rail carrier, either itself or jointly with a motor carrier, as part of continuous intermodal freight transportation, including, without limitation, any other TOFC/COFC transportation as defined under federal law.

History.

Acts 2009, ch. 348, § 1; 2011, ch. 213, § 1; 2017, ch. 486, § 1; 2018, ch. 765, § 7; 2018, ch. 933, § 3.

Compiler's Notes.

For the Preamble to the act regarding allowing an in-state or out-of-state entity to ship wine directly to consumers age twenty-one years or older in this state for personal use, please refer to Acts 2009, ch. 348.

Amendments.

The 2017 amendment, effective July 1, 2018, added (h).

The 2018 amendment by ch. 765 added the second sentence in (a).

The 2018 amendment by ch. 933, in the first sentence of (h)(1), inserted ", beer, or other alcoholic beverages" and substituted "wine, beer, or other alcoholic beverage shipments" for "wine shipments".

Effective Dates.

Acts 2017, ch. 486, § 2. July 1, 2018.
Acts 2018, ch. 765, § 8. July 1, 2018.
Acts 2018, ch. 933, § 7. July 1, 2018.

Cross-References.

Penalty for a Class E felony, § 40-35-111.

57-3-218. Winemaking on premises facility license.

(a) A winemaking on premises facility license may be issued as provided in

this section for a business, located in a jurisdiction where the establishment of a winery is permitted pursuant to § 57-3-207, where individual customers who are twenty-one (21) years of age or older may purchase ingredients and rent the equipment, time, and space to manufacture wine, as defined in § 57-3-101, for personal use in an amount not to exceed the maximum amount that a private individual in that person's own home may manufacture pursuant to § 57-3-207(e). Any applicant for licensure under this section shall submit a verified, written application to the commission on the proper form authorized to be prescribed and furnished in this section, and the application may be granted by the commission, subject to the restrictions of this chapter. Subject to the limitations of subsection (b), any winemaking on premises facility license issued pursuant to this section shall authorize the holder of the license and the holder's customers to manufacture, but not rectify, wine, and the winemaking on premises facility license shall authorize the holder of the license and the holder's customers to place the wine in containers or bottles.

(b)(1) Except for wine produced in the process of testing equipment or recipes, and producing samples to be distributed pursuant to subdivision (b)(2), a license holder shall not personally manufacture wine that is not intended for the personal use of the license holder on the premises of the winemaking on premises facility. Nothing in this subdivision (b)(1) shall be construed to prohibit a license holder from assisting the license holder's customers who are engaged in the manufacture of wine on the premises of the facility.

(2) A winemaking on premises facility licensed under this section may serve wine that is produced on the premises of the facility without charge as complimentary samples for tasting at the facility. Samples may be consumed at the premises only by a person who has a nonrefundable contract to manufacture at the premises, and the samples may not exceed one ounce (1 oz.) per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer or license holder who manufactured the wine and may only be used for home consumption and the personal use of the customer or license holder.

(c) Each applicant for a winemaking on premises facility license issued pursuant to this section shall pay to the commission a one-time, nonrefundable fee in an amount to be determined by the commission when the application is submitted for review. The license shall not be issued until a license fee in an amount to be determined by the commission is paid to the commission by the winemaking on premises facility, but issuance of the license is exempt from the requirements of § 57-3-106. The commission shall deposit collections with the state treasurer to be earmarked for and allocated to the commission for the purpose of the administration and enforcement of the duties, powers and functions of the commission.

(d) A winemaking on premises facility licensed under this section located in this state is authorized to sell the following items on the facility premises:

(1) Juices or concentrates derived from juices, or any agricultural products;

(2) Items used in home winemaking; and

(3) Other gift, tourism, or wine-related items as defined by regulations duly promulgated by the commission.

(e) Any wine transported from a winemaking on premises facility pursuant to this section must be accompanied by a bill of lading or other memorandum of shipment signed by the license holder for the facility where the wine was manufactured sufficiently identifying the nature, quantity, manufacturer, date and place of manufacture of the wine. Any person transporting such wine in excess of five gallons (5 gals.) shall have with the shipment a receipt or other documentation demonstrating that the wine was manufactured by the individual who is transporting the wine at a winemaking on premises facility as licensed in this section.

(f) Any licensee or other person who sells, furnishes, disposes of, gives or causes to be sold, furnished, disposed of or given, any wine in this state or for transport into this state, to any person under the age of majority as established by § 57-4-203(b), commits a Class A misdemeanor.

(g) The commission is empowered and authorized to promulgate such rules and regulations as may be necessary to carry out the duties of the commission as provided in this section, including, but not limited to, procedures governing the production and transportation of wine.

(h) It is the duty of the commissioner of agriculture to establish reasonable procedures requiring proper sanitary conditions about the winemaking on premises facility and to certify that these conditions have been met before the commission issues any license. The commissioner shall establish reasonable procedures requiring the process of manufacturing wine in a winemaking on premises facility to be carried on under proper sanitary conditions and in a sanitary manner; and for any failure to comply with the procedures, the commissioner shall notify the commission, which is authorized to revoke or suspend the license of any winemaking on premises facility.

(i) If any provision of this section or application of this section to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to that end the provisions of this section are declared to be severable.

History.
Acts 2011, ch. 451, § 2.

Cross-References.
Penalty for Class A misdemeanor, § 40-35-111.

57-3-219. Continuation of the issuance of licenses for the retail sale of alcoholic beverages for off-the-premises consumption in certain counties.

If, a smaller city located in a county having a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, retained its charter when the metropolitan form of government was adopted in such county; and

If, such city later by action of its governing body abolishes its charter and by such action becomes a part of the general services district of such county having a metropolitan form of government; and

If, while the charter of such smaller city was in existence, licenses were

issued for the retail sale of alcoholic beverages for off-the-premises consumption; then:

Notwithstanding any provision of the charter of such metropolitan government to the contrary, licenses may continue to be issued for the retail sale of alcoholic beverages for off-the-premises consumption for those stores which were located within the municipal boundaries of the city while the charter was in force even though, once the charter is abolished, such area will be designated as being included in the general services district of such county.

History.
Acts 2010, ch. 1133, § 6; T.C.A. § 57-4-108.

Compiler's Notes.
Former § 57-4-108, concerning licenses that may be continue to be issued for certain retail sales of alcoholic beverages for off-premises consumption, was transferred to § 57-3-219 in 2011 by the Tennessee Code Commission.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

57-3-220. License for military personnel living abroad to ship wine to this state.

(a) Any individual who has been stationed outside the United States while serving as a member of the armed forces of the United States or a member of a reserve or Tennessee national guard unit may apply to the commission for a one-time license allowing such individual to ship any wine such individual has purchased while residing outside the United States to this state.

(b) Each individual applying for a license under this section shall pay to the commission a one-time nonrefundable fee of one hundred dollars ($100). Each individual shall also pay the appropriate taxes required pursuant to § 57-3-302.

(c) The commission shall create a form for issuing a license under this section. The form shall contain any information the commission deems necessary for allowing shipment under this section and for ensuring the individual pays the appropriate taxes.

(d) Any individual who ships wine pursuant to this section is prohibited from reselling any wine shipped to this state.

History.
Acts 2012, ch. 968, § 3.

57-3-221. Manager's permit.

(a) There is created a manager's permit to be issued by the commission to any individual who will be in actual control of the alcohol, wine or beer operations of a retailer licensed under § 57-3-204, or a retail food store wine licensee.

(b) An individual seeking a manager's permit shall make application for such permit by completing an application form in the manner prescribed by the commission. The individual must demonstrate that the individual meets the following requirements:

(1) Has not been convicted of any crime involving the sale or distribution of alcohol over the previous eight (8) years;

(2) Has not been convicted of any felony within the previous five (5) years;

(3) Is at least eighteen (18) years of age;

(4) Has not had an employee or server permit or any similar type permit issued by the state, any local jurisdiction, or any foreign jurisdiction revoked by any issuing authority within the previous three (3) years;

(5) Does not hold any ownership interest in any licensee or permittee licensed pursuant to § 57-3-203, nor shall the individual have had any ownership interest in any licensee licensed under this title that has had its license revoked by the issuing authority within the previous eight (8) years; and

(6) Has received training in alcohol awareness and the rules and regulations of the commission by an entity approved by the commission pursuant to § 57-3-705.

(c) The manager's permit shall be valid for a period of five (5) years. The commission may impose a fee for the processing and cost of issuance of the manager's permit and for renewal of such permit. The fee shall be adequate for the commission to undertake an appropriate verification of the information provided by the applicant. This fee, which shall not exceed two hundred dollars ($200), shall be determined by the commission.

(d) Manager's permits shall be required for the appropriate individuals at retailers licensed under § 57-3-204 and retail food store wine licensees.

History.
Acts 2014, ch. 554, § 11; 2017, ch. 373, §§ 4, 5.

57-3-222. Minimum required sales for renewal of retail license — Recordkeeping — Suspension or revocation of license.

(a) In order to renew a retail license, the licensee must maintain a minimum of sixty-five percent (65%) of the licensee's total sales from alcoholic beverages, including wine and beer, such percentage to be calculated on an annual basis. The licensee shall keep sales and purchase records through accounting methods that are customary or reasonable in the retail business.

(b) A retail licensee who fails to comply with subsection (a) in achieving the minimum required sales or in failing to keep adequate records shall have one (1) year to come into compliance. During this one-year period, the licensee shall work with the commission in creating a plan that would bring the licensee into compliance with this section.

(c) Failure to comply after the one-year period shall result in the retail license being suspended or revoked by the commission.

(d) In order to determine compliance with subsection (a), each retail licensee shall submit sales information to the commission in such form as the commission deems appropriate at the time the licensee applies for renewal. The commission is authorized to verify sales information if the commission deems it necessary with the department of revenue.

History.
Acts 2014, ch. 554, § 13.

57-3-223. Retail licensee permitted to also hold license to sell alcoholic beverages for consumption on premises — Requirements.

Notwithstanding any other provision in this title or any rule to the contrary, an individual or corporation may hold a retail license issued pursuant to § 57-3-204 and may also hold a license to sell alcoholic beverages for consumption on premises pursuant to chapter 4 of this title; provided, however, that each license must be operated as a separate and distinct business and shall not be at the same location.

History.
Acts 2014, ch. 554, § 16.

57-3-224. Delivery service license.

(a)(1) There is created a delivery service license to be issued by the commission to any delivery service that delivers or facilitates delivery of prepared food from restaurants or items from a retail store to customers as part of the delivery service's business and seeks to deliver sealed packages of alcoholic beverages or beer or both sold by any retailer licensed under this chapter, or an off-premises retail permittee licensed under § 57-5-103 as part of such delivery service. If a delivery service licensed under this section is delivering alcoholic beverages or beer purchased from a retailer in accordance with this subsection (a), the delivery service shall not deliver the alcoholic beverages or beer to a customer who resides or is located at the time of the delivery:

(A) More than fifty (50) miles from the licensed premises of the retailer at which the alcoholic beverages or beer were purchased; or

(B) In any county other than the county in which such retailer is located or a county contiguous to such county.

(2) A delivery service includes, for purposes of this title, a technology services company that provides software or an application for connecting customers, retailers, or restaurants to a delivery driver. A delivery service does not include, and no license is required under this title to operate, a technology services company that does not employ or contract with delivery drivers but rather provides software or an application that connects retail licensees with consumers for the delivery of alcoholic beverages or beer from the retailer pursuant to § 57-3-406(j) or a company that ships wine pursuant to § 57-3-217. This section does not apply to a "motor carrier" or "freight forwarder" as those terms are defined in 49 U.S.C. § 13102, or to an "air carrier" as that term is defined in 49 U.S.C. § 40102.

(b)(1) Any person, partnership, limited liability company, or corporation desiring to deliver sealed packages of alcoholic beverages or beer sold by a retailer licensed under § 57-3-204 or an off-premise retail permittee licensed under § 57-5-103 as part of such delivery service shall make application to the commission for a delivery service license, which application shall be in writing and verified, on forms herein authorized to be prescribed and furnished; and the commission shall, subject to the restrictions of this section, issue such license.

(2)(A) Any person applying for a delivery service license shall be twenty-

one (21) years of age or older and must not have been convicted of a felony as described in § 57-3-210(c).

(B) The commission may issue a delivery service license to any person, partnership, limited liability company, or corporation that is registered to do business in this state regardless of the residence of the ownership of such entity.

(c) Each applicant for a delivery service license shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. A delivery service license shall not be issued by the commission until the applicant pays the annual license fee of one hundred fifty dollars ($150).

(d) Each delivery service licensee shall conduct, or have a third party conduct, a local and national criminal background check on any potential employee or independent contractor that seeks to be licensed pursuant to § 57-3-225. Such background check shall include a multistate criminal records locator or other similar commercial nationwide database with validation.

(e) It is the duty of each delivery service licensee to ensure that each employee or independent contractor, delivering alcoholic beverages or beer pursuant to § 57-3-406(k) for the licensee, is licensed pursuant to § 57-3-225.

(f) A delivery service may use either employees or independent contractors as part of such delivery service. Any person delivering products for a delivery service shall comply with the provisions contained in § 57-3-225 related to delivery drivers in order to deliver alcoholic beverages or beer or both as provided in this section.

History.

Acts 2015, ch. 285, § 2; 2016, ch. 1045, §§ 2, 3; 2016, ch. 1068, § 3; 2018, ch. 765, §§ 1-4.

Amendments.

The 2018 amendment redesignated former (a) as present (a)(1) and added (a)(1)(A), (a)(1)(B) and (2); in the first sentence of present (a)(1), inserted "or facilitates delivery of" and "or items from a retail store", substituted "any retailer licensed under this chapter, or an off-premises retail permittee" for "a retailer licensed under § 57-3-204 or an off-premise retail permittee", and deleted "at a distance greater than one hundred (100) miles from the licensed premises of the retailer at which the alcoholic beverages or beer was purchased" at the end; inserted "or independent contractor" in (d) and (e); and added (f).

Effective Dates.

Acts 2018, ch. 765, § 8. July 1, 2018.

57-3-225. Delivery employee license.

(a) Beginning July 1, 2018, each delivery service licensed under § 57-3-224 shall be required to annually file a report stating the number of delivery drivers used by the delivery service to deliver alcoholic beverages, beer, or both, in the twelve (12) months preceding the date of the report. Each delivery service licensee shall maintain for each delivery driver covered by the licensee's delivery service license, records sufficient to verify the identity of each delivery driver, a copy of each delivery driver's license, and a copy of the background check conducted for that delivery driver pursuant to § 57-3-224(d).

(b) Each delivery service licensee may employ or contract with any person meeting the following requirements:

(1) Is at least twenty-one (21) years of age;

(2) Has had a background check conducted pursuant to § 57-3-224(d) to

ensure the individual has not been convicted of any crime involving the sale and distribution of alcohol within the previous seven (7) years or has not been convicted of any felony within the previous five (5) years; and

(3) Has a valid driver license.

(c) In addition to the annual license fee in § 57-3-224(c), a delivery service licensee shall pay a fee based on the total number of delivery service employees or independent contractors used by the delivery service licensee in the prior year. The fee shall be as follows:

(1) 0-15 delivery drivers — $50

(2) 16-30 delivery drivers — $100

(3) 31-45 delivery drivers — $150

(4) 46-60 delivery drivers — $200

(5) 61-100 delivery drivers — $250

(6) 101-150 delivery drivers — $300

(7) 151-200 delivery drivers — $350

(8) Fifty dollars ($50.00) for each additional fifty (50) delivery drivers over two hundred (200) until a maximum of one thousand dollars ($1,000).

(d) With respect to the delivery of alcoholic beverages, beer, or both pursuant to this chapter, a delivery service company may be subject to fines or the suspension or revocation of its license from the commission based on the conduct of a delivery driver. A retailer is not subject to a fine or the suspension or revocation of its license based on conduct of a delivery service driver after the driver picks up alcoholic beverages or beer from the retailer.

History.

Acts 2015, ch. 285, § 2; 2016, ch. 1045, § 4; 2018, ch. 765, § 6.

Amendments.

The 2018 amendment rewrote the section which read: "(a) Beginning July 1, 2015, there is created a delivery employee license to be issued by the commission to any individual employed by a person licensed pursuant to § 57-3-224 who delivers alcoholic beverages or beer pursuant to § 57-3-406(k).

"(b) Any individual seeking a delivery employee license shall make application for such license by completing an application form in the manner prescribed by the commission. The individual shall demonstrate that the individual meets the following requirements:

"(1) Is at least twenty-one (21) years of age;

"(2) Has had a background check done pursuant to § 57-3-224(d) to ensure the individual has not been convicted of any crime involving the sale or distribution of alcohol within the previous eight (8) years or has not been convicted of any felony within the previous five (5) years; and

"(3) Has a valid driver license.

"(c) Each individual applying for a license under this section shall pay to the commission a fee of fifty dollars ($50.00). Each delivery employee license shall be valid for a period of five (5) years.

"(d) If an applicant does not meet the requirements of subsection (b), but is otherwise eligible for a delivery employee permit, then the applicant's application shall be initially denied pursuant to this subsection (d). Within thirty (30) days of such initial denial, the applicant may request a hearing to be held pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. At such hearing, the administrative law judge or hearing officer may consider any evidence the administrative law judge or hearing officer deems relevant to the matter and may, if in the administrative law judge's or hearing officer's judgment the principles of equity require, approve the application and grant the delivery employee permit, notwithstanding the requirements of subsection (b).

"(e) If an applicant does not request a hearing pursuant to subsection (d) within the required period, then the application's denial will be final and the applicant shall not reapply for a delivery employee permit until five (5) years from the application's final denial. If a person applies for a delivery employee permit in violation of this subsection (e), then such application shall be denied and subsection (d) shall not apply.

"(f) If the administrative law judge, hearing officer, or commission denies an application at a hearing held pursuant to subsection (d), then the application's denial will be final and the applicant shall not reapply for a delivery em-

ployee permit until five (5) years from the application's final denial. If a person applies for a delivery employee permit in violation of this subsection (f), then such application shall be denied and subsection (d) shall not apply.

"(g) If a person is convicted of an offense described in subdivision (b)(2) after being issued a delivery employee permit pursuant to this section, the commission may institute proceedings to revoke the person's employee permit pursuant to § 57-3-214; provided, that the administrative law judge or hearing officer may, if in the administrative law judge's or hearing officer's judgment the principles of equity require, refuse to revoke the person's delivery employee permit, notwithstanding a finding that the person has been convicted of an offense described in subdivision (b)(2). If the administrative law judge, hearing officer, or commission revokes a delivery employee permit pursuant to this subsection (g), then the applicant shall not reapply for a delivery employee permit until five (5) years from the revocation. If a person applies for a delivery employee permit in violation of this subsection (g), then such application shall be denied and subsection (d) shall not apply."

Effective Dates.

Acts 2018, ch. 765, § 8. July 1, 2018.

PART 3

TAXES

57-3-301. Brand name alcoholic beverages — Tax — Sale or importation — Contracts — Revocation of permits or licenses.

(a) As used in this section "brand" means:

(1) Each and every distilled spirits, wine product, beer with an alcoholic content of five percent (5%) by weight or greater high alcohol content beer product bearing a distinct brand name or trade name as defined or used by the United States department of the treasury, alcohol and tobacco tax and trade bureau, shall be considered a separate "brand" for purposes of this section;

(2) Within the group of wine or distilled spirits products bottled, manufactured, distilled, rectified, imported or marketed under a particular "brand name" or "trade name" as described in subdivision (a)(1), products which fall within separate classes or types as defined in the standards of identity for the several classes and types of wine and distilled spirits promulgated by the federal bureau of alcohol, tobacco and firearms shall be considered separate "brands" for purposes of this section; provided, that wine or distilled spirits products which differ only in the amount of alcohol or proof they contain shall not be considered separate brands for purposes of this section;

(3) The name, trademark, or trade name of the product, as indicated on the certificate of label approval as registered with the alcohol and tobacco tax and trade bureau of the United States department of the treasury, or, if no certificate of label approval is required, then the name, trademark, or trade name of the product.

(b)(1) There is imposed a tax of two hundred fifty dollars ($250) per annum upon each brand of distilled spirits sold in this state, for which actual wholesale sales during the twelve (12) months immediately preceding May 22, 1979, were fifty (50) cases or more.

(2) There is imposed a tax of one hundred dollars ($100) per annum upon each brand of distilled spirits sold in this state for which actual wholesale sales during the twelve (12) months immediately preceding May 22, 1979, were less than fifty (50) cases.

(3) There is imposed an annual tax upon each brand of wine sold in this

state. The amount of this tax shall be based on the number of cases sold at wholesale in this state during the year immediately preceding any tax year as follows:

(A) Less than two hundred fifty (250) cases — No tax due; and

(B) Two hundred fifty (250) or more cases — Two hundred fifty dollars ($250).

(4) There is imposed a tax of one hundred dollars ($100) per annum upon each brand of beer with an alcoholic content greater than five percent (5%) by weight or each brand of high alcohol content beer sold in this state.

(c) No manufacturer, importer or representative shall introduce into this state any brand of alcoholic beverages until such tax has been paid to the department of revenue.

(d) No wholesaler shall give an order, receive, accept or offer for sale any brand of alcohol beverages until the annual tax has been paid to the department of revenue.

(e)(1) No brand may be introduced into the state except pursuant to written contract to sell such brand in this state between the manufacturer, brewer or importer of such brand and the Tennessee wholesaler who is to sell such brand in this state. Every contract shall contain the specified area in which such wholesaler will sell such brand and no more than one wholesaler may sell such brand in any specified area.

(2) If any party to a contract described in subdivision (e)(1) fails to comply with any provision of the contract, an aggrieved party may bring an action in the circuit or chancery courts of this state.

(3) No contract shall include the entire state of Tennessee as the specified area in which such wholesaler will sell any brand.

(4) No manufacturer or importer nor any successor to a manufacturer or importer may terminate a contract prior to the expiration of its term except for good cause, asserted in good faith, as determined by the commissioner of revenue. No manufacturer or importer, nor any successor to a manufacturer or importer may seek to terminate a contract for good cause, unless such manufacturer or importer has afforded the affected wholesaler with whom it has contracted a reasonable opportunity to cure any deficiency which in no event shall be less than thirty (30) days. No successor to a manufacturer or importer may register a contract to distribute a brand in this state with the department of revenue which differs from the contract previously filed for the distribution of such brand except for good cause, asserted in good faith, as determined by the commissioner of revenue.

(5) No manufacturer or importer nor any successor to a manufacturer or importer may fail to renew a contract with a wholesaler except for good cause, asserted in good faith, as determined by the commissioner of revenue. No manufacturer or importer, nor any successor to a manufacturer or importer may fail to renew a contract for good cause, unless such manufacturer or importer has afforded the affected wholesaler a reasonable opportunity to cure any deficiency which in no event shall be less than thirty (30) days.

(6) For purposes of this section, any modification of the designated area serviced by a wholesaler shall constitute a termination of its contract.

(f) If the commissioner of revenue, after a hearing, determines the manufacturer or importer has failed to establish good cause asserted in good faith as required herein, the provisions of the contract between such manufacturer or importer and the designated Tennessee wholesaler are still in force and a failure by such manufacturer or importer or its successor to ship to such a wholesaler a reasonable amount of the brand shall be grounds for a revocation of that manufacturer's or importer's nonresident seller's permit or winery license.

(g) The department of revenue is authorized to accept the brand registrations required under this section and the contracts described in subdivision (e)(1) by electronic means. The department of revenue is authorized to approve one (1) or more third parties to facilitate electronic submissions on behalf of importers, manufacturers, suppliers, or wholesalers; provided, that such third parties shall:

(1) Be permitted to assess a reasonable cost against the importer, supplier, manufacturer, or wholesaler that elects to use the electronic service;

(2) Not assess any fees or costs against the state for providing such service;

(3) Adhere to the records requirements, privacy requirements, and technical requirements imposed by the department of revenue;

(4) Agree to provide documentation and support for all brand registrations and contract registrations as required by the department of revenue as part of the electronic process; and

(5) Agree to facilitate communication between the department of revenue and the affected importers, manufacturers, suppliers, and wholesalers to relate the status of any filing, transfer, or tax liability.

(h) The department of revenue is authorized to promulgate rules and regulations relative to the brand registration provisions of this section.

History.

Acts 1979, ch. 341, § 1; T.C.A., § 57-130; Acts 1980, ch. 782, § 1; 1984, ch. 684, §§ 1, 2; 1985, ch. 125, § 1; 1996, ch. 706, §§ 1, 2; 2013, ch. 171, §§ 1, 2; 2014, ch. 861, §§ 20-22.

Compiler's Notes.

Acts 1985, ch. 125, § 2 provided that it is the intent of the general assembly to afford all affected parties to a proposed change in distribution of a brand of alcoholic beverage the right to a hearing prior to the change becoming effective.

For regulations regarding wine and distilled spirits promulgated by the federal bureau of alcohol, tobacco, and firearms, referred to in this section, see 27 CFR 4.1 et seq. and 27 CFR 5.1 et seq.

Cross-References.

Damaged or unaccepted goods, tax liability, § 57-3-109.

Attorney General Opinions.

Brand transfer hearings in the department of revenue, OAG 90-65 (6/12/90).

A vendor who is caught selling beer to a minor is subject to criminal penalties imposed by the local criminal court ranging from a Class A misdemeanor to a Class E felony and is also subject to the suspension or revocation of his permit imposed by the local beer board, OAG 01-062 (4/20/01).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Legislative Intent.
3. Transfer of Authority.

1. Constitutionality.

Tennessee's ban on the direct shipment of

alcoholic beverages (including wine) to consumers is valid.Jelovsek v. Bresden, 482 F. Supp. 2d 1013, 2007 U.S. Dist. LEXIS 23814 (E.D. Tenn. Mar. 30, 2007), aff'd in part and vacated in part, Jelovsek v. Bredesen, 545 F.3d 431, 2008 FED App. 0386P (6th Cir.), 2008 U.S. App. LEXIS 22295 (6th Cir. Tenn. 2008).

2. Legislative Intent.

The provisions of T.C.A. § 57-3-301 were not intended to grant any more freedom to the liquor industry than had previously existed, but rather to facilitate the process of governmental regulation and tax collection. Brown-Forman Distillers Corp. v. Olsen, 676 S.W.2d 567, 1984 Tenn. App. LEXIS 3416 (Tenn. Ct. App. 1984).

3. Transfer of Authority.

T.C.A. § 57-3-301(g) transferred the rule-making power as to brand registration, formerly under T.C.A. § 57-1-209, from the alcoholic beverage commission to the department of revenue. Brown-Forman Distillers Corp. v. Olsen, 676 S.W.2d 567, 1984 Tenn. App. LEXIS 3416 (Tenn. Ct. App. 1984).

57-3-302. Tax upon distribution or sale — Exemptions.

(a) There is levied upon the sale or distribution by sale or gift a tax of one dollar and twenty-one cents ($1.21) on each gallon of wine, and a like or proportional rate per gallon on wine sold or distributed in any other container of more or less than one gallon (1 gal.); provided, however, that this chapter shall not apply to the sale, gift or distribution of any wine manufactured, sold, given away or distributed and used solely for sacramental purposes.

(b) There is levied upon the sale or distribution by sale or gift a tax of four dollars and forty cents ($4.40) on each gallon of spirits, and a like or proportional rate per gallon on spirits sold or distributed in any container of more or less than one gallon (1 gal.).

History.

Acts 1939, ch. 49, § 13; 1943, ch. 5, § 1; 1947, ch. 61, § 1; C. Supp. 1950, § 6648.19 (Williams, § 6648.16); Acts 1963, ch. 37, § 1; 1967, ch. 331, § 2; 1977, ch. 126, § 3; T.C.A. (orig. ed.), § 57-131; Acts 1985, ch. 386, § 2; 2002, ch. 856, §§ 1a, 1c.

Compiler's Notes.

Acts 2002, ch. 856, § 10, effective July 4, 2002, which raised the amount of tax to be levied in subsections (a) and (b), provided that notwithstanding any provision of law to the contrary, the commissioner of revenue is authorized to waive tax liability and associated interest and penalties otherwise imposed for failure to pay taxes levied pursuant to that act in a timely manner, but only to the extent that the taxpayer or vendor can demonstrate, to the commissioner's satisfaction, that the taxpayer's or vendor's noncompliance with the requirements of the act unavoidably and directly resulted from the close proximity of the effective date of the act with implementation of the increase in tax rates or items or activities taxed pursuant to the provisions of the act. Section 14(j) of that same act provided that § 10 be repealed effective September 2, 2002.

Acts 2002, ch. 856, § 13 provided that no expenditure of public funds pursuant to that act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

Cross-References.

Tennessee wine products exempt from tax, § 57-3-207.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 13, 14.

Law Reviews.

A Focus on Taxes: The Tennessee Tax Reform Act of 2002 Explained, 38 No. 9 Tenn. B.J. 12 (2002).

57-3-303. Payment of tax — Returns — Bond — Stamps — Rules and regulations — Penalties — Armed forces exemption.

(a) Any wholesaler who imports alcoholic beverages into this state, or who receives alcoholic beverages manufactured in the state, for the purpose of resale in any retail container for eventual retail sale or distribution by sale or gift in this state, shall pay the tax imposed in § 57-3-302; provided, that manufacturers and rectifiers duly qualified under this chapter shall be exempt

therefrom on all out of state shipments made to persons holding both federal and state permits to sell alcoholic beverages; and provided further, that any distiller or manufacturer licensed to manufacture alcoholic beverages in Tennessee shall be permitted to pay such tax to the commissioner of revenue on such amount of its own product as may be needed for its own use, not to exceed one hundred (100) cases per month. Whenever "sale" or "sold" is used hereinafter in this section, it also means "use" or "used" and "distribute by gift" or "distributed by gift," unless the context requires otherwise.

(b)(1) The tax levied by § 57-3-302 shall become due and payable on the first day of each month following the month during which taxable transactions occur, and shall become delinquent if not paid on or before the fifteenth day of each such following month. For the purpose of ascertaining the amount of tax payable, it is the duty of each licensed wholesaler, distiller or manufacturer to transmit to the commissioner a return, as provided for hereinafter, on or before the fifteenth day of each month, upon forms prescribed, and furnished by the commissioner. The tax liability established on the return submitted shall be based upon adjusted gross sales, other than sales or returns to wholesalers and/or suppliers, for the preceding calendar month, and payment thereof shall be made on or before the fifteenth day following such month.

(2) In the event of termination of business by a wholesaler, a final return shall be filed and all tax due paid on or before the fifteenth day following closure.

(c)(1) Each wholesaler of alcoholic beverages in this state shall file, on or before the fifteenth day of each month, an exact and verified return with the commissioner showing therein, for the preceding calendar month, the quantities of alcoholic beverage:

(A) Constituting the wholesaler's beginning and ending inventory;

(B) Shipped to the wholesaler from within this state and received by the wholesaler in this state;

(C) Shipped to the wholesaler from outside the state and received by the wholesaler in this state;

(D) Sold by the wholesaler to purchasers or persons in this state and, indicated separately, those sales or transactions of alcoholic beverages to purchasers or persons within this state on which the tax levied in § 57-3-302 is not applicable; and

(E) Sold by the wholesaler to purchasers or persons outside this state.

(2) Such report shall also contain any other information required by the commissioner.

(d) Each wholesaler, distiller or manufacturer required to file a return shall keep accurate and complete books and records, accounts, and other documents as may be deemed necessary by the commissioner and the commission to substantiate the accuracy of the wholesaler's, distiller's or manufacturer's return and the amount of tax due, and shall retain such records for a period of three (3) years.

(e) The commission, after public hearing of which the licensee shall have due notice as heretofore provided in this chapter, may suspend or revoke any license heretofore issued under this chapter for a failure to pay any tax

required by this chapter and may suspend or revoke such license for a violation of or failure to comply with the rules and regulations promulgated hereunder, upon receipt of a certification from the commissioner reflecting such failure to pay such tax or a violation of or failure to comply with such rules and regulations.

(f)(1) In order to ensure the payment of taxes levied herein, every licensed wholesaler of alcoholic beverages shall qualify with the commissioner before making sales of any alcoholic beverages in this state.

(2) In order to so qualify, each wholesaler who is licensed in this state shall annually furnish the department:

(A) A cash bond, or a surety bond, with a solvent surety company qualified to do business in this state, the amount of which shall be no less than one hundred ten percent (110%) of the average monthly tax liability of such licensee for the taxes imposed herein during the preceding twelve-month period;

(B) Any wholesaler shall before beginning business file an initial bond for a period of four (4) months, the amount of which shall be determined by the commissioner, and at the end of such period the bond shall be adjusted for the balance of the twelve-month period or until the following July 1, whichever occurs first, in an amount no less than one hundred ten percent (110%) of the average tax liability of licensee for the first four (4) months engaged in business, and such bond shall be adjusted annually thereafter in the manner as set forth in subdivision (f)(2)(A); and

(C) Such other information as the commissioner may require.

(g) The purchase and affixation of alcoholic beverage tax or identification stamps are not required in this state, and all requirements pertaining to the purchase and affixation of such stamps are hereby specifically repealed.

(h)(1) If a taxpayer has been in continuous operation for three (3) consecutive years and during the preceding twelve (12) months has paid the gallonage tax imposed by § 57-3-302 for which the taxpayer is liable within the period set by this section or by rule, then the taxpayer shall not be required to execute and maintain any bond required by this section.

(2) Any taxpayer exempted from the bonding requirement of this section who fails to pay the tax levied by § 57-3-302 within the period for payment set by this section or by rule shall, upon such failure, be required to execute and maintain a bond as required in this section.

(i) The commission shall be authorized to prescribe the manner by which any licensee shall document that all alcoholic beverages sold or distributed in this state have been properly distributed and that all taxes imposed hereunder have been paid.

(j) The commission and the commissioner are authorized to make reasonable rules and regulations, not inconsistent with this chapter, relative to the proper documentation needed to demonstrate that all alcoholic beverages and wine distributed in this state have been properly taxed.

(k) The state tax set forth in this title on intoxicating liquor or alcoholic beverages, as defined in § 57-3-101, shall not be applicable to such intoxicating liquors or alcoholic beverages sold for consumption within the geographical boundaries of a fort, base, camp or post of the armed forces of the United

States, or to post exchanges, ship service stores, commissaries and messes operated by the United States armed forces. The exemption of the tax herein made shall be effectuated by the department allowing wholesalers and distilleries, duly licensed in Tennessee, credit for taxes paid on such intoxicating liquors or alcoholic beverages sold to post exchanges, ship service stores, commissaries and messes operated and controlled by the United States armed forces, and which are instrumentalities of the government of the United States. This credit shall be allowed only upon application made therefor to the department by the wholesaler or distillery delivering the intoxicating liquor or alcoholic beverage, and upon a showing by copy of the invoice with the signature of an officer or civilian employee who possesses managerial authority over the post exchange, ship service store, commissary or mess certifying that the alcoholic beverage was sold to and delivered to the post exchange, ship service store, commissary or mess by the Tennessee wholesaler or distillery. In addition, the application shall be supported by such other evidence as the commissioner may by regulation require.

(*l*) Notwithstanding § 57-3-302, the state tax on intoxicating liquor or alcoholic beverages with an alcoholic content of seven percent (7%) or less shall be one dollar and ten cents ($1.10) per gallon and no identification stamps shall be required to be fixed to the retail container of such alcoholic beverage.

History.

Acts 1939, ch. 49, § 13; C. Supp. 1950, § 6648.19 (Williams, § 6648.16); Acts 1965, ch. 119, § 1; 1968, ch. 521, § 1; 1970, ch. 361, § 1; 1970, ch. 398, § 1; 1974, ch. 707, § 1; modified; T.C.A. (orig. ed.), § 57-132; Acts 1980, ch. 885, § 4; 1983, ch. 119, § 1; 1987, ch. 226, § 1; 1988, ch. 526, § 13; 1990, ch. 621, §§ 1, 2; 1992, ch. 608, §§ 1-4; 1993, ch. 108, § 1; 2014, ch. 861, § 5.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 16, 17.

Law Reviews.

The Tennessee Department of Revenue and the Uniform Administrative Procedures Act (Mike Norton), 6 Mem. St. U.L. Rev. 303.

57-3-304. Sale or possession of untaxed alcoholic beverages unlawful.

(a) No alcoholic beverages in retail containers shall be sold for eventual retail sale or distribution by gift or retail sale in the state unless the taxes imposed under this part are paid. No retail outlet or unlicensed individual shall purchase or have in its possession any alcoholic beverages unless the taxes imposed under this part are paid.

(b) Any person possessing alcoholic beverages in excess of five gallons (5 gals.) shall have the burden of proof that such beverages were purchased from a licensed retailer or retail food store licensed to sell wine pursuant to part 8 of this chapter and that all taxes imposed by this part have been paid.

(c) It is unlawful for any person, dealer, distributor, or manufacturer, to sell, offer for sale, display for sale, barter, exchange or give away any alcoholic beverage, or any container thereof, in this state, without having first paid, in the manner prescribed by the commission, the tax provided in §§ 57-3-302 and 57-3-303.

(d) A violation of this section is a Class C misdemeanor.

History.

Acts 1939, ch. 49, § 13; C. Supp. 1950, § 6648.19 (Williams, § 6648.16); impl. am. Acts 1963, ch. 257, § 34; T.C.A. (orig. ed.),

§ 57-133; Acts 1989, ch. 591, § 113; 1992, ch. 608, § 5; 2009, ch. 434, § 5; 2014, ch. 554, § 3.

Cross-References.

Penalty for Class C misdemeanor, § 40-35-111.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 12, 17, 20.

NOTES TO DECISIONS

Analysis

1. Persons Subject to Section.
2. Possession of Liquor.
3. Selling, Exchanging or Giving Away Liquor.

1. Persons Subject to Section.

A tax is levied upon a retailer of intoxicating liquors and, under the definition of a retailer in T.C.A. § 57-3-101, any person who sells at retail any whiskey must be regarded as falling within that description regardless of whether making one sale or many sales. Hill v. State, 176 Tenn. 475, 144 S.W.2d 734, 1940 Tenn. LEXIS 89 (1940).

2. Possession of Liquor.

Possession of liquors in general is only made prima facie evidence of possession "with intent to sell or distribute the same contrary to the law." Daniels v. State, 176 Tenn. 181, 140 S.W.2d 148, 1939 Tenn. LEXIS 112 (1940), superseded by statute as stated in, State v. Durso, 645 S.W.2d 753, 1983 Tenn. LEXIS 768 (Tenn. 1983).

This section did not make the bare possession of liquor in containers not bearing the Tennessee revenue stamp an offense except by a "retail outlet" and a presentment which did not charge the defendant with being a "retail outlet" did not charge any offense triable under this statute. Daniels v. State, 176 Tenn. 181, 140 S.W.2d 148, 1939 Tenn. LEXIS 112 (1940), superseded by statute as stated in, State v. Durso, 645 S.W.2d 753, 1983 Tenn. LEXIS 768 (Tenn. 1983).

3. Selling, Exchanging or Giving Away Liquor.

Since under this section it is unlawful for "any person" to sell, exchange or give away any alcoholic beverage without having first paid the tax, it is immaterial whether or not such person be regarded as a dealer or person engaged in selling intoxicating liquors and a conviction for a single sale is valid. Hill v. State, 176 Tenn. 475, 144 S.W.2d 734, 1940 Tenn. LEXIS 89 (1940).

57-3-305. State tax exclusive.

The tax imposed in §§ 57-3-302 and 57-3-303 is a state tax, for the benefit of the state and the counties thereof as hereinafter provided, and no county, municipality or taxing district shall have the power to levy a like tax.

History.

Acts 1939, ch. 49, § 13; 1943, ch. 5, § 3; 1947, ch. 61, § 3; mod. C. Supp. 1950, § 6648.19 (Williams, § 6648.16); T.C.A. (orig. ed.), § 57-134.

57-3-306. Disposition of tax proceeds.

(a) Any county in this state where a distillery is located shall receive four cents (4¢) per liter of the tax imposed by § 57-3-302(b) collected on all sales in this state of the spirits manufactured by such distillery.

(b)(1) Except for the distribution as provided in subsection (a), collections of the tax imposed by § 57-3-302(a) and (b) shall be distributed eighty-two and one-half percent (82.5%) to the general fund and seventeen and one-half percent (17.5%) to the counties. The amount distributed to the counties shall be apportioned among the counties three fourths (¾) in proportion to their population and one fourth (¼) in proportion to their area.

(2) Before distributing to the counties any of the revenues mentioned in subsection (a) and subdivision (b)(1), the commissioner of finance and administration shall deduct a sum measured at a rate of sixteen thousand

dollars ($16,000) per month, which sum together with an appropriation per annum from the general fund of the state shall be apportioned and transmitted to the University of Tennessee for use by the university in operating the county technical advisory service (CTAS) in its Institute for Public Service (IPS) as provided by § 49-9-402.

(c) Thirty percent (30%) of the amount distributed to counties having a population of more than two hundred fifty thousand (250,000), according to the 1970 federal census or any subsequent federal census, shall be paid by such counties to any municipalities within such counties that have a population of one hundred fifty thousand (150,000), according to the 1970 federal census or any subsequent federal census.

(d) For purposes of allocating tax proceeds under this section, county population shall be as reported by the most recent federal census except as modified by special census taken pursuant to § 9-16-101.

History.

Acts 1939, ch. 49, § 13; 1943, ch. 5, §§ 1, 3; 1947, ch. 61, §§ 1, 3; mod. C. Supp. 1950, § 6648.19 (Williams, § 6648.16); impl. am. Acts 1959, ch. 9, § 14; Acts 1963, ch. 37, § 2; impl. am. Acts 1963, ch. 257, § 33; Acts 1973, ch. 295, § 18; impl. am. Acts 1975, ch. 248, § 1; Acts 1978, ch. 497, § 3; 1978, ch. 806, § 3; 1978, ch. 835, § 1; T.C.A. (orig. ed.), § 57-135; Acts 1980, ch. 556, § 1; 1983, ch. 36, § 1; 2003, ch. 355, § 18; 2005, ch. 500, § 1; 2006, ch. 989, § 6.

Compiler's Notes.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2003, ch. 355, § 66 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

Acts 2006, ch. 989, § 17 provided that § 6 of the act, which deleted former subdivision (b)(3), shall apply to funds remitted to the department of revenue on or after August 1, 2006.

Cross-References.

Disposition of license fees of wholesalers and retailers, § 57-3-206.

Attorney General Opinions.

The state can probably continue to distribute state-shared taxes even if the General Assembly does not enact a general appropriations act, OAG 00-083 (5/4/00).

The state can probably continue to distribute state-shared taxes even if the General Assembly does not enact a general appropriations act, OAG 00-083 (5/4/00).

57-3-307. Accounting for distribution of alcoholic beverages — Inventory adjustment for unsalable beverages.

(a) Any wholesaler who shall import alcoholic beverages into this state, or receive alcoholic beverages manufactured in the state for the purpose of use, resale or distribution by gift or retail sale in this state, shall be required to account for the distribution of all such alcoholic beverages and shall be unconditionally liable for the tax imposed herein for each and every container of alcoholic beverage removed from inventory and not sold or otherwise disposed of in accordance with this chapter or by rules and regulations promulgated by the commissioner of revenue.

(b) The commissioner shall prescribe appropriate rules and regulations for the proper adjustment of the wholesaler's inventory when alcoholic beverages in the wholesaler's inventory are rendered unsalable. Before authorizing such an adjustment, a claim in writing and proof must be furnished in support thereof and verified by the department of revenue.

History.
Acts 1951, ch. 138, § 1 (Williams, § 6648.16); Acts 1965, ch. 243, § 1; 1968, ch. 521, § 2; 1970, ch. 398, § 2; T.C.A. (orig. ed.), § 57-136.

57-3-308. Taxes on high alcohol content beer.

The taxes imposed on high alcohol content beer shall be as provided in § 57-3-302(a) or § 57-3-303(*l*), whichever is applicable.

History.
Acts 2011, ch. 448, § 18.

PART 4

PROHIBITED ACTS — ENFORCEMENT

57-3-401. Transportation, possession, importation, shipment or delivery of untaxed alcoholic beverages unlawful — Penalty.

(a)(1) It is an offense for any person, firm or corporation, other than a common carrier or entity licensed under this title, to transport, either in person or through an agent, employee or independent contractor, untaxed alcoholic beverages or wine as defined in § 57-3-101 within, into, through or from this state in quantities in excess of five gallons (5 gals.). Except as provided in § 57-3-103(b) authorizing a person to store alcoholic beverages intended for a person's personal or social use, it is an offense for any person, firm, corporation or association to possess untaxed alcoholic beverages or wine in quantities in excess of five gallons (5 gals.). A violation of this subdivision (a)(1) is a Class E felony.

(2) Any person, firm, corporation or association transporting any alcoholic beverages or wine within or into this state shall bear the burden of proof that the taxes imposed by this title on alcoholic beverages or wine have been paid, or, in the case of wine that is manufactured at a winemaking on premises facility licensed pursuant to § 57-3-218, that no such taxes are due. A receipt or other documentation demonstrating legal purchase or transport from an entity licensed under § 57-3-203, § 57-3-204, § 57-3-207 or § 57-3-218 shall be adequate proof that such taxes have been paid or that no such taxes are due.

(b)(1) It is an offense for any person, firm, corporation or association to import, ship, deliver or cause to be imported, shipped or delivered into this state any alcoholic beverages upon which the tax imposed by this title has not been paid or where such transportation is not authorized under this title to an entity possessing a license issued under this title. A violation of this subdivision (b)(1) is a Class E felony.

(2) Except as provided in § 57-3-207 for purchases made by an individual at a winery licensed pursuant to § 57-3-207, and notwithstanding the prohibition in subdivision (b)(1), it shall be lawful for any individual to transport not more than five gallons (5 gals.) of alcoholic beverages or wine into or within this state for the personal or household use of that individual.

History.
Acts 1947, ch. 182, §§ 1, 2; C. Supp. 1950, § 6648.22 (Williams, §§ 6648.33, 6648.34); T.C.A. (orig. ed.), § 57-137; Acts 1989, ch. 591,

§ 61; 1992, ch. 608, §§ 6, 7; 2009, ch. 434, § 6; 2011, ch. 451, § 7.

Cross-References.

Penalty for Class E felony, § 40-35-111.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 12, 17, 20.

Law Reviews.

The Wine Is In the Mail: The Twenty-First Amendment and State Laws Against the Direct Shipment of Alcoholic Beverages, 54 Vand. L. Rev. 2495 (2001).

NOTES TO DECISIONS

Analysis

1. Constitutionality and Validity.
2. Sufficiency of Indictment.
3. Defenses.
4. Searches and Seizures.
5. Evidence.
6. Judicial Notice.
7. Cross-Examination of Defendant.

1. Constitutionality and Validity.

Acts 1947, ch. 182 from which this section was codified was not invalid as amending Acts 1939, ch. 49 without reciting the title or substance of such act since any amendment accomplished by the 1947 act was by implication and did not fall within such constitutional objections. Everhart v. State, 194 Tenn. 272, 250 S.W.2d 368, 1952 Tenn. LEXIS 378 (1952).

Tennessee's ban on direct shipment of alcoholic beverages, including wine, to consumers, is valid because it applies equally to in-state and out-of-state wineries. Jelovsek v. Bredesen, 545 F.3d 431, 2008 FED App. 386P, 2008 U.S. App. LEXIS 22295 (6th Cir. Oct. 24, 2008).

2. Sufficiency of Indictment.

An indictment which omits the allegation essential to constitute a felony under this section does not charge a felony. Shook v. State, 192 Tenn. 134, 237 S.W.2d 959, 1951 Tenn. LEXIS 389 (1951).

The indictment need not aver that the liquor in question contained more than five percent alcohol. Everhart v. State, 194 Tenn. 272, 250 S.W.2d 368, 1952 Tenn. LEXIS 378 (1952).

An indictment which avers that the defendants had the possession of "white moonshine liquor" was sufficient notice to the defendants that they were charged with the unlawful possession of unstamped whiskey and was equivalent to a charge to that effect. Everhart v. State, 194 Tenn. 272, 250 S.W.2d 368, 1952 Tenn. LEXIS 378 (1952).

3. Defenses.

The fact that the liquor was not unstamped would constitute an affirmative defense and the burden would be on the defendant to show the same. Everhart v. State, 194 Tenn. 272, 250 S.W.2d 368, 1952 Tenn. LEXIS 378 (1952).

Where liquor in fruit jar containers was physically introduced in the presence of the jury for their examination, it might be presumed that the character of the containers was such as to negative any thought of stamps and the jury by personal inspection could determine that no stamps had been affixed to the containers. Everhart v. State, 194 Tenn. 272, 250 S.W.2d 368, 1952 Tenn. LEXIS 378 (1952).

4. Searches and Seizures.

Where car was seen early in the morning traveling at an excessive rate of speed, sagging at the rear end and the officer noticed the odor of whiskey when he stopped the car, officer was justified in searching the trunk of the car without a search warrant. Dobbins v. State, 206 Tenn. 59, 332 S.W.2d 161, 1960 Tenn. LEXIS 342 (1960).

5. Evidence.

Introduction into evidence of fruit jar containers containing moonshine whiskey was sufficient proof that whiskey was unstamped. Everhart v. State, 194 Tenn. 272, 250 S.W.2d 368, 1952 Tenn. LEXIS 378 (1952).

The unexplained presence of contraband liquor upon the premises occupied by the accused and under his control is sufficient to convict. Hatchett v. State, 208 Tenn. 399, 346 S.W.2d 258, 1961 Tenn. LEXIS 298 (1961).

6. Judicial Notice.

Court will take judicial notice that moonshine whiskey contains more than five percent alcohol. Everhart v. State, 194 Tenn. 272, 250 S.W.2d 368, 1952 Tenn. LEXIS 378 (1952).

7. Cross-Examination of Defendant.

It was not error to cross-examine defendant charged with violation of this section relative to prior convictions for liquor offenses. Everhart v. State, 194 Tenn. 272, 250 S.W.2d 368, 1952 Tenn. LEXIS 378 (1952).

57-3-402. Importation or transportation limited.

(a) It is unlawful, except as permitted in this chapter, for any person to import or transport, or cause to be imported or transported from any other

state, territory, or country, into this state, any alcoholic beverages defined in § 57-3-101. This subsection (a) shall not apply to alcoholic beverages imported or transported into this state pursuant to former § 39-17-705(5).

(b) Except as provided in § 57-3-217, no common carrier or other person shall bring or carry into this state for delivery or use in this state any alcoholic beverages unless the same shall be consigned to a manufacturer or wholesaler duly licensed under this chapter, or unless the alcoholic beverages shall be consigned to a post exchange, ship's service store, mess, club, commissary, or other agency under the jurisdiction of the department of defense, in which event notice of the shipment shall be given to the commission as required by § 57-3-110.

(c) It is unlawful for any person, railroad company or other common carrier, to transport or accept delivery of alcoholic beverages, consigned to any person except those duly authorized and holding a wholesaler's license. This shall not apply to:

(1) Shipments from a duly licensed wholesaler in this state to a retailer duly licensed or to points outside the state;

(2) Alcoholic beverages consigned to a post exchange, ship's service store, club, commissary, or mess, or any other agency under the jurisdiction of the department of defense after notice of such shipment is given to the commission as required by § 57-3-110; or

(3) Alcoholic beverages transported by a licensee pursuant to the rules and regulations of the commission for the purposes of conducting an educational seminar by a business licensed pursuant to § 57-3-204.

(d) Transportation of alcoholic beverages as defined in this chapter, within, into, through or over this state in quantities in excess of five gallons (5 gals.) is permitted only in conformity with this chapter, except in counties wherein the sale of alcoholic beverages has been legalized.

(e) No alcoholic beverages or wine may be sold or delivered to a retailer authorized to sell such alcoholic beverages or wine under this title, whether on premise or off premise, unless such alcoholic beverages have been stored or warehoused at a premises licensed by the commission pursuant to § 57-3-203 for a period of no less than twenty-four (24) hours. It is the stated purpose of this requirement to verify the legality of all alcoholic beverages or wine distributed in this state, and to facilitate the proper payment of all taxes on alcoholic beverages. This subsection (e) shall not apply to deliveries to a licensee under § 57-3-202(i), § 57-3-204(d), or § 57-3-207(r).

History.

Acts 1939, ch. 49, §§ 12-14; C. Supp. 1950, §§ 6648.16, 6648.17, 6648.19 (Williams, §§ 6648.15-6648.17); Acts 1955, ch. 347, §§ 2, 2A, 3; impl. am. Acts 1959, ch. 9, § 14; impl. am. Acts 1963, ch. 257, § 36; modified; T.C.A. (orig. ed.), § 57-138; Acts 1987, ch. 164, § 3; 1998, ch. 765, § 2; 2009, ch. 348, § 3; 2009, ch. 434, § 7; 2016, ch. 1068, § 2.

Compiler's Notes.

For the Preamble to the act regarding allowing an in-state or out-of-state entity to ship wine directly to consumers age twenty-one years or older in this state for personal use, please refer to Acts 2009, ch. 348.

Cross-References.

Warning to be published by out-of-state liquor advertisers, § 47-18-117.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 12.

Law Reviews.

Criminal Law and Procedure — 1957 Tennessee Survey (James B. Earle), 10 Vand. L. Rev. 1073.

Attorney General Opinions.

Provision of this section prohibiting vintners from making mail order sales of wine to retail customers does not violate the commerce clause of the United States Constitution, OAG 04-010 (1/30/04).

Tennessee resident who makes an onsite purchase of wine at an out-of-state winery, is not permitted by 27 U.S.C. § 124 to use a common carrier to ship such wine back to Tennessee, OAG 09-015 (2/24/09).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Permit Not Required in Wet County.

1. Constitutionality.

Tennessee's ban on the direct shipment of alcoholic beverages (including wine) to consumers is valid.Jelovsek v. Bresden, 482 F. Supp. 2d 1013, 2007 U.S. Dist. LEXIS 23814 (E.D. Tenn. Mar. 30, 2007), aff'd in part and vacated in part, Jelovsek v. Bredesen, 545 F.3d 431, 2008 FED App. 0386P (6th Cir.), 2008 U.S. App. LEXIS 22295 (6th Cir. Tenn. 2008).

Tennessee's ban on direct shipment of alcoholic beverages, including wine, to consumers, is valid because it applies equally to in-state and out-of-state wineries. Jelovsek v. Bredesen, 545 F.3d 431, 2008 FED App. 386P, 2008 U.S. App. LEXIS 22295 (6th Cir. Oct. 24, 2008).

2. Permit Not Required in Wet County.

There is no provision in the statute requiring one transporting liquor in a wet county to have a permit. Chadwick v. State, 201 Tenn. 57, 296 S.W.2d 857, 1956 Tenn. LEXIS 465 (1956).

57-3-403. Transportation in quantities in excess of five gallons — Bond — Bill of lading — Off-premises consumption.

(a) The transportation of alcoholic beverages as defined in § 57-3-101, within, into, through, or from this state in quantities in excess of five gallons (5 gals.) is permitted only in conformity with this section or as otherwise permitted in this chapter:

(1) Before any person shall transport any alcoholic beverages within, into, through, or from this state, except by means of common carrier, such person shall post with the commission a bond with approved surety payable to the state of Tennessee in the penalty of one thousand dollars ($1,000), upon condition that such person will not unlawfully transport or deliver any alcoholic beverages within, into, through, or from this state, and evidence that the required bond has been posted shall accompany the alcoholic beverages at all times during transportation. No such bond shall be required of any person licensed under this chapter to sell alcoholic beverages at wholesale when such alcoholic beverages are being transported in a vehicle belonging to the licensee;

(2) Where alcoholic beverages are desired to be transported within, into, or through or from this state, such transportation shall be engaged in only when in accordance with this section or as otherwise permitted in this chapter, viz:

(A) There shall accompany such alcoholic beverages at all times during transportation, a bill of lading or other memorandum of shipment signed by the consignor, showing an exact description of the alcoholic beverages being transported; the name and address of the consignor; the name and address of the consignee; and the route to be traveled by such vehicle while in Tennessee. Such route must be the most direct route from the consignor's place of business to the place of business of the consignee;

(B) Vehicles transporting alcoholic beverages shall not vary from the route specified in the bill of lading or other memorandum of shipment;

(C) The name of the consignor on any such bill of lading or other memorandum of shipment shall be the name of the true consignor of the alcoholic beverages being transported, and such consignor shall only be a person who has a legal right to make such shipment. The name of the consignee on any such bill of lading or memorandum of shipment shall be the name of the true consignee of the alcoholic beverages being transported, who has previously authorized in writing the shipment of the alcoholic beverages being transported and who has legal right to receive such alcoholic beverages at the point of destination shown on the bill of lading or other memorandum of shipment; and

(D) The driver or person in charge of any vehicle covered by any bond posted with the commission under this section shall, when requested by any representative or agent of the commission or any person having police authority, exhibit to such person the bill of lading or other memorandum of shipment covering the cargo of such vehicle;

(3) An alcoholic beverages wholesale licensee who also carries on a beer wholesale operation as provided by § 57-3-203(b)(2) may lawfully transport alcoholic beverages and beer in the same vehicle; provided, that all other legal requirements applicable to such transportation are satisfied.

(b) Notwithstanding any provision of this section or title 39 to the contrary, in any jurisdiction wherein the retail sale of alcoholic beverages for consumption off the premises has been legalized, it shall be lawful to receive, possess and transport alcoholic beverages if all appropriate taxes as required by law have been paid upon such alcoholic beverages.

History.

Acts 1945, ch. 167, § 9; C. Supp. 1950, § 6648.17; impl. am. Acts 1963, ch. 257, § 37; T.C.A. (orig. ed.), § 57-139; Acts 1982, ch. 614, § 1; 2009, ch. 434, §§ 8, 9; 2014, ch. 554, § 25.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 15, 21, 28.

NOTES TO DECISIONS

1. Confiscation for Noncompliance with Section.

Although commission had issued permit authorizing defendant to transport whiskey, his truck and its contents were properly confiscated where he violated statute by deviating from shortest route to destination, having no bill of lading signed by consignor, and delivering to consignee without legal right to receive shipment. Evans v. Pearson, 193 Tenn. 528, 246 S.W.2d 964, 1952 Tenn. LEXIS 321 (1952).

Where officers observed truck being loaded with whiskey at a point in another state some distance from warehouse from a "feeder truck" under suspicious circumstances, and officers continuously followed the truck until it crossed the Tennessee state line where they stopped the truck and confiscated the whiskey because the transportation was not in compliance with this section, the seizure was legal. Kizer v. Ward, 195 Tenn. 200, 258 S.W.2d 759, 1953 Tenn. LEXIS 322, 1953 Tenn. LEXIS 323 (1953).

57-3-404. Regulations for purchase and sale of intoxicating liquors — Wholesalers — Check cashing — Ground floor location — Credit sales.

(a) It is unlawful for any person in this state to buy any alcoholic beverages herein defined from any person, who, to the knowledge of the buyer, does not hold the appropriate license under the laws of this state authorizing the sale of such beverages to the buyer.

(b) No retailer shall purchase any alcoholic beverages from anyone other than a licensed wholesaler, nor shall any wholesaler sell any alcoholic beverages to anyone other than a licensed retailer or retail food store licensed to sell wine pursuant to part 8 of this chapter or a licensed wholesaler; provided, that such alcoholic beverages sold by one (1) wholesaler to another wholesaler shall be transported by common carrier or by vehicle owned or leased and operated by either the consignor wholesaler or the consignee wholesaler.

(c) No manufacturer or distiller shall sell any alcoholic beverages to any person in this state except a licensed wholesaler and to another manufacturer or distiller, and no manufacturer shall hold a wholesaler's license.

(d)(1) No alcoholic beverage for sale to the retailer, or the retailer's representative, shall be sold except by a licensed wholesaler, who sells for resale on the wholesaler's premises and who carries on no other business, directly or indirectly, and whose wholesale business in alcoholic beverages is not operated as an adjunct to, or supplementary to, the business of any other person, either by way of lease of the wholesale premises or otherwise, for any business other than that permitted by the terms of such wholesaler's wholesale license.

(2) Notwithstanding the limitations and restrictions imposed by this section, a wholesaler may invest its business assets in other businesses, and may engage in the sale and distribution of products other than alcoholic beverages; provided, that gross revenues from such other businesses and from the sale of products other than alcoholic beverages may not exceed fifty percent (50%) of a wholesaler's total gross revenues.

(3) A licensed alcoholic beverages wholesaler may lawfully engage in activities covered by chapter 5 of this title, as provided by § 57-3-203(b)(2), without regard to the amount of gross revenues produced by such operation. Such wholesaler may, at the wholesaler's discretion, use the same warehouse and other facilities, vehicles and employees in both operations; provided, that all legal requirements applicable to such operations are satisfied with respect to each operation.

(e)(1) No retail licensee shall operate its business involving the sale of wine, beer or other alcoholic beverages in connection with the wholesale distribution of wine, beer or other alcoholic beverage nor shall such licensee sell its wine, beer or other alcoholic beverage for purposes of resale.

(2) Notwithstanding subsection (a), beginning July 1, 2014, a retail licensee holding a license issued under § 57-3-204 shall be permitted to sell at retail beer and other malt beverages, subject to the restriction in [former] § 57-3-806(e). No permit or license other than the license issued pursuant to § 57-3-204 shall be required for the licensed retailer to engage in such sales of beer and other malt beverages and the issuer of that license has the authority to enforce any laws related to such sales.

(3) A retail licensee shall be permitted to cash a check or other negotiable instrument for a fee when such service is made available to a person over twenty-one (21) years of age. No postdated check shall be cashed by a licensee under this section.

(4) Beginning July 1, 2014, a retail licensee shall also be permitted to sell at retail items related to or incidental to the use, consumption, dispensing or

storage of alcoholic beverages, together with merchandise and supplies related to special events or parties, subject to the restriction in [former] § 57-3-806(e). Such items may include, but are not limited to:

(A) Newspapers, magazines, publications, videos and other media related to alcoholic beverages or food;

(B) Utensils and supplies related or incidental to the use, consumption, dispensing or storage of alcoholic beverages, including, without limitation, corkscrews, beverage strainers, pourers, flasks, jiggers, stirrers, wine racks, wine refrigerators, wine cellars, decanters, carafes, glassware, ice crushers, bottle openers, can openers, and devices to maximize oxidation in uncorked wine bottles and other items used in connection with the consumption, storage or dispensing of alcoholic beverages;

(C) Gift cards, packages and baskets that include alcoholic beverages and nonalcoholic items;

(D) Nonalcoholic beverages;

(E) Kegs and growlers, whether empty or filled with beer, wine or alcoholic beverages, on the licensed premises;

(F) Concentrates and ingredients used in the preparation of mixed alcoholic beverages;

(G) Beer and wine-making kits;

(H) Products and supplies related to beer and wine-making;

(I) Lemons, limes, cherries, olives and other food items used in the preparation or garnishment of alcoholic beverages or mixed alcoholic beverages;

(J) Peanuts, pretzels, chips, cheese, crackers, appetizers and other snack foods;

(K) Beverage coolers, ice chests and ice in any form;

(L) Party supplies, party decorations, gift bags, greeting cards and other items for parties and special events;

(M) Articles of clothing and accessories imprinted with advertising, logos, slogans, trademarks or messages related to alcoholic beverages;

(N) Combined packages containing multiple alcoholic beverages;

(O) Cigarettes, cigars and lighters and other smoking or tobacco related products; and

(P) Lottery tickets if the retailer's application is approved by the Tennessee education lottery corporation as provided in § 4-51-115(e).

(5) A retail licensee may sell nonalcoholic products to persons under twenty-one (21) years of age including gift cards.

(f) No wholesale or retail store shall be located except on the ground floor, and it may have two (2) main entrances opening on a public street, and such place of business shall have no other entrance for use by the public except as hereafter provided. When a wholesale or retail store is located on the corner of two (2) public streets, such wholesale or retail store may maintain a door opening on each of the public streets. Any sales room adjoining the lobby of a hotel or other public building may maintain an additional door into such lobby so long as same shall be open to the public. Every wholesale and retail store shall be provided with whatever entrances and exits may be required by existing or future municipal ordinances. When the location of a wholesale or

retail liquor store is authorized to be located or operated within an established shopping center or shopping mall, and such liquor store cannot and does not have a main entrance or door opening onto a public street; but the main entrance or door would open or front on a shopping center parking area, the commission in its discretion may approve the issuance of a liquor license to cover such location within the shopping center or shopping mall, irrespective of the fact that the main entrance or door does not or would not open onto a public street.

(g)(1) No holder of a license for the sale of alcoholic beverages for wholesale or retail shall sell, deliver, or cause, permit or procure to be sold or delivered, any alcoholic beverages on credit, except that holders of wholesale licenses may sell on not more than ten (10) days' credit.

(2) The ten-day period begins from delivery and receipt by the retail licensee. The ten-day period cannot include any day that the wholesaler is not open to make deliveries, receive payment or receive mail.

(3) Any suspension of deliveries is a credit decision to be made by a wholesaler and a retail licensee.

(4) A wholesaler shall be permitted to communicate with another wholesaler about the account status of any retail licensee.

(5) Wholesalers shall advise the commission of any failure of a retailer to comply with this subsection (g).

(6) The commission shall be permitted to post the account status of a retail licensee with any wholesaler on its website.

(7) This subsection (g) shall not apply to nonalcoholic products.

(h)(1) No alcoholic beverages shall be sold for consumption on the premises of the seller except as provided in §§ 57-4-101 — 57-4-203, and except as may be permitted by the regulations of the commission for the purpose of conducting consumer educational seminars by a licensee under § 57-3-204, conducted on the premises of a business licensed pursuant to §§ 57-4-101 — 57-4-203. A wholesaler licensed pursuant to § 57-3-203 or a person holding a permit as a representative or sales person pursuant to § 57-3-203(d) may conduct a sales demonstration on the premises of a licensed retailer and, for such limited purpose, may provide free samples to the employees of a licensed retailer for consumption on such premises. A retail licensee may conduct such a sales demonstration for the persons employed by such licensee holding permits issued pursuant to [former] § 57-3-204(c) using products and samples provided by a wholesaler or wholesaler sales representative notwithstanding the absence of the wholesaler or wholesaler sales representative. All such sales demonstrations permitted consumption shall be permitted only for sales, education, and promotional purposes and no one other than a retail licensee, a person holding a permit issued pursuant to [former]§ 57-3-204(c), a wholesaler or a wholesaler sales representative, or a person holding a permit issued pursuant to § 57-3-202(d) may be present in the room where such demonstration is conducted or may receive a sample for consumption.

(2)(A) A retail licensee may offer complimentary samples of the products it sells for tastings to be held on the premises of the retail licensee. Such tastings shall be for sales, education and promotional purposes. No person

holding a license under § 57-3-203 shall, directly or indirectly, provide any products, funding, labor, support or reimbursement to a retailer for the consumer tastings authorized by this subdivision (h)(2).

(B)(i) The tastings may be held at the option of the retail licensee during the hours the retail licensee is open for business, without filing any notice other than as provided in subdivision (h)(2)(B)(ii) with the commission, and no charge or fee may be assessed by the commission for a retail licensee to offer such complimentary samples.

(ii) With its annual renewal, the retail licensee shall notify the commission of its intention to conduct tastings during the year on the premises of the retail licensee. If following the date the license is renewed, the retail licensee makes a determination to offer tastings, the licensee shall notify the commission of its intention to conduct tastings for the remainder of the year.

(C) The size of each sample shall be no greater than approximately two ounces (2 oz.) for each wine or high alcohol content beer sample and no greater than approximately one-half ounce (½ oz.) for each liquor sample. It is the responsibility of the retail licensee to limit the number of tastings per customer and the number of products available for tasting.

(D) Notwithstanding any law or rule to the contrary, a retail licensee or employee of the licensee may participate in tastings.

(E) A server permit is not required for employees conducting tastings if the employee has a permit pursuant to § 57-3-703; provided, that every retail licensee which offers tastings is encouraged to ensure that any employee who is involved with the tastings understands that a violation of § 57-3-406(c) and (d) and § 57-3-412 related to retail sales apply equally to those customers who participate in the tastings.

(F) A supplier may provide, through licensed wholesalers, products for tasting purposes by a retail licensee.

(i) No wholesaler may provide a discount or other reduction in price to a retailer or retail food store wine licensee by virtue of the sales made to any other licensee. Any discount or pricing made available to a retailer or retail food store wine licensee shall be made available on the same terms and conditions to other retailers and food store wine licensees within the same jurisdiction. Any quantity discounts provided by wholesalers to any retailer licensed under this chapter or any licensee licensed under chapter 4 of this title cannot be cumulative in nature, but can be based only upon products delivered contemporaneously. No retail food store wine licensee may receive any remuneration, by whatever name, at a corporate office located inside or outside this state that affects the profitability of wine or beer sales in this state, that is not made available to all retail licensees or other retail food stores licensed to sell wine or beer in this state.

History.

Acts 1939, ch. 49, §§ 5, 11, 14; 1945, ch. 48, § 1; 1945, ch. 167, § 6; C. Supp. 1950, §§ 6648.15-6648.17 (Williams, §§ 6648.8, 6648.14, 6648.17); Acts 1955, ch. 347, § 1A; 1967, ch. 211, § 2; 1970, ch. 469, § 2; 1971, ch. 72, § 1; modified; T.C.A. (orig. ed.), § 57-140; Acts 1983, ch. 454, § 1; 1993, ch. 157, § 1; 1997, ch. 35, § 1; 1998, ch. 765, § 3; 2002, ch. 672, § 2; 2011, ch. 448, § 19; 2012, ch. 947, § 2; 2014, ch. 554, §§ 2, 10, 14, 17, 19, 26, 29; 2017, ch. 443, § 6.

Compiler's Notes.

Section 57-3-806(e), referred to in this section, was deleted by Acts 2016, ch. 1068, § 6.

Section 57-3-204(c), referred to in this section, expired effective July 1, 2016.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 2, 8, 15, 28.

Attorney General Opinions.

Licensed wholesalers of alcoholic beverages may extend up to 10 days' credit to licensed retailers other than retail food store wine licensees. OAG 16-18, 2016 Tenn. AG LEXIS 17 (5/9/2016).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Transactions Between Wholesalers.
3. Entrance.

1. Constitutionality.

Tennessee's ban on the direct shipment of alcoholic beverages (including wine) to consumers is valid.Jelovsek v. Bresden, 482 F. Supp. 2d 1013, 2007 U.S. Dist. LEXIS 23814 (E.D. Tenn. Mar. 30, 2007), aff'd in part and vacated in part, Jelovsek v. Bredesen, 545 F.3d 431, 2008 FED App. 0386P (6th Cir.), 2008 U.S. App. LEXIS 22295 (6th Cir. Tenn. 2008).

2. Transactions Between Wholesalers.

Ownership of all of capital stock of wholesale liquor company by second wholesale liquor company does not change fact that the two companies are two separate entities, and allegation that transaction did not amount to a sale for the reason that shipping wholesaler owned all the stock in the receiving wholesaler and was shipping merely to replenish stock, did not make shipment of whiskey through dry county lawful. In re A-1 Liquor Distributors, Inc., 37 Tenn. App. 661, 269 S.W.2d 785, 1953 Tenn. App. LEXIS 119 (Tenn. Ct. App. 1953).

3. Entrance.

An opening two feet square in the rear of a liquor store through which large quantities of liquor were delivered was an entrance within the meaning of the term in this section and constituted sufficient ground for the revocation of the dealer's license. Terry v. Evans, 189 Tenn. 345, 225 S.W.2d 255, 1949 Tenn. LEXIS 436 (1949).

57-3-405. Solicitation of business restricted.

It is unlawful for any representative, employee, or agent of any distiller, rectifier or manufacturer, to solicit business from anyone in this state except those holding a wholesaler's license to do business in this state.

History.

Acts 1939, ch. 49, §§ 12, 13; C. Supp. 1950, §§ 6648.16, 6648.19 (Williams, §§ 6648.15, 6648.16); T.C.A. (orig. ed.), § 57-141; Acts 2014, ch. 554, § 31.

57-3-406. Regulation of retail sales.

(a)(1)(A) Except for retailers licensed under § 57-3-204, no person, corporation or other entity shall, directly or indirectly, operate any licensed retail establishment selling alcoholic spirituous beverages, not including wine, for off-premises consumption in this state.

(B) "Indirectly" means any kind of interest in such a retail business by way of stock ownership, loan, partner's interest or otherwise.

(C) A landlord shall be deemed to have an indirect interest in such a retail business when the lease agreement is based upon a percentage of profits or any other factor based upon sales of alcoholic beverages by the tenant as distinguished from being simply an interest in land for a period of time at a definite rate.

(2) Except as provided in this subsection (a), nothing shall prohibit the holder of a retail license from having more than one (1) retail license; provided, however, that the holder of a retail license shall not have more

than two (2) retail licenses. If the commission has issued more than two (2) licenses to any person prior to April 12, 2016, such person shall be allowed to continue to have all such licenses and may renew all such licenses.

(3) In any municipality or county in which the issuance of two (2) or more retail licenses have been authorized under § 57-3-208(c), no retail licensee shall hold more than fifty percent (50%) of the licenses authorized for issuance in such municipality or county.

(4) For five (5) years beginning January 1, 2014, no retail license shall be issued to any applicant for a new location that is within one thousand five hundred feet (1,500′) of an existing operating establishment holding a license issued pursuant to § 57-3-204 as of July 1, 2014, (an "existing licensed premises") if the applicant for such new retail license already holds one (1) or more retail licenses issued under § 57-3-204, unless the commission receives the written consent from each retail licensee owning an existing licensed premises within one thousand five hundred feet (1,500′) of such new location. Notwithstanding any law to the contrary, the holder of one (1) or more retail licenses issued under § 57-3-204 may purchase the business or assets of an existing licensed premises and obtain a retail license to operate such existing licensed premises, as the same may be expanded or modified, from time to time. Nothing in this subdivision (a)(4) shall be deemed to prohibit a retailer licensed under § 57-3-204 from obtaining a new or replacement license in connection with the relocation of an existing licensed premises, as long as the new location is within the jurisdiction of the municipality or county issuing the certificate required under § 57-3-208 for such existing licensed premises.

(b) Nothing in this chapter shall prohibit a retailer from offering a discount in such manner as the retailer deems appropriate as long as the discount being offered is not below the cost paid by the retailer to purchase the alcoholic beverages from the wholesaler.

(c) No retailer shall sell any alcoholic beverages or beer to any person who is visibly intoxicated, nor shall any retailer selling alcoholic beverages or beer sell to any person accompanied by a person who is visibly intoxicated.

(d)(1) A retailer or any employee thereof shall not make or permit to be made any sales of alcoholic beverages or beer to minors. Prior to making a sale of alcoholic beverages for off-premises consumption, the adult consumer whose physical appearance does not reasonably demonstrate an age of fifty (50) years or older must present to the retailer or any employee of the retailer a valid, government-issued document, such as a driver license or other form of identification deemed acceptable to the retailer that includes the photograph and birth date of the adult consumer attempting to make an alcoholic beverage purchase. Persons exempt under state law from the requirement of having a photo identification shall present identification that is acceptable to the retailer. The retailer or employee shall make a determination from the information presented whether the purchaser is an adult. In addition to the prohibition of making a sale to a minor, no sale of alcoholic beverages for off-premises consumption shall be made to a person whose physical appearance does not reasonably demonstrate an age of fifty (50) years or older who does not present such a document or other form of identification to the license holder or any employee of the license holder in a

face-to-face transaction.

(2) A violation of subdivision (d)(1) is a Class A misdemeanor.

(3) The commission may, upon finding that a licensee has violated subdivision (d)(1) two (2) or more times during any two-year period, and for good cause shown, fine the licensee not more than ten thousand dollars ($10,000) and require retraining of all employees of the licensee under the supervision of the commission in lieu of suspending or revoking the license of the licensee.

(e) No retail store shall sell, give away, or otherwise dispense alcoholic beverages except between the hours of eight o'clock a.m. (8:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Monday through Saturday and between ten o'clock a.m. (10:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Sunday.

(f) Except as provided in § 57-3-404(e)(4)(E), no retailer of alcoholic beverages shall keep or permit to be kept upon the licensed premises any alcoholic beverages in any unsealed bottles or other unsealed containers except such open bottles and containers of damaged and unmarketable product retained by the retail licensee for purpose of return to a wholesaler or such open bottles and containers required for conducting a sales demonstration as permitted by § 57-3-404(h).

(g) No retailer as herein defined shall own, store or possess upon the licensed premises any merchandise unless the retailer shall also possess such documentation as prescribed by the commission to demonstrate that the taxes imposed in this chapter have been paid. No retailer may store any alcoholic beverages, wine, or beer at any location other than the licensed premises and the retailer shall not hold, store, or accept delivery of any products intended for another retailer.

(h) Notwithstanding subsection (e), a retailer shall not sell or give away any alcoholic beverages on Christmas, Thanksgiving, or Easter.

(i) No retail food store shall keep, or permit to be kept, upon the licensed premises any wine in any unsealed bottles or other unsealed containers except such open bottles and containers of damaged and unmarketable product retained by the retail food store for purpose of return to a wholesaler. This subsection (i) shall not apply to the premises within a retail food store that has a license under chapter 4 of this title.

(j)(1) Notwithstanding any provision of this title to the contrary, retailers licensed under § 57-3-204 are authorized, for a fee or without a fee, to provide, within the state, consulting services related to alcoholic beverages and to the products, merchandise, and supplies that the retailer is authorized to sell under § 57-3-404(e), and may supply, sell, deliver, and install products authorized to be sold by the retailer to locations outside of the licensed premises.

(2) Any licensee making a delivery of alcohol, wine, or beer is subject to subsections (c) and (d) except that no person receiving delivery of alcohol, wine, or beer shall be required to purchase such items at the physical location of the retailer. The licensee shall require a valid, government-issued document, such as a driver license or other form of identification deemed acceptable to the retailer that includes the photograph and birth date of the person receiving the delivery and that shall be deemed sufficient to meet the

requirements of this subdivision (j)(2) and subsection (d). A record of all deliveries shall be maintained in writing and must contain all information concerning the recipient, products delivered, the time of delivery, and place of delivery.

(3) Any delivery made by a retailer pursuant to this subsection (j) must be made only to the physical address indicated by the individual placing the delivery order. The delivery must be documented by a verification of the delivery signed by the recipient.

(k)(1) Except as otherwise provided in subdivision (k)(3), notwithstanding any law or rule to the contrary, a delivery service that delivers prepared food from restaurants or food from a retailer to customers as part of the delivery service's business is authorized to deliver sealed packages of alcoholic beverages or beer or both sold by a retailer licensed under § 57-3-204 to the delivery service's customers and to deliver sealed packages of beer sold by an off-premise retail permittee licensed under § 57-5-103 to the delivery service's customers during the hours that these products may legally be sold if:

(A) The amount of alcoholic beverages or beer delivered to a customer is in such an amount to satisfy the customer's order; provided, however, if an amount ordered exceeds two gallons (2 gal.), then the delivery driver shall have available for inspection by a commission representative or other law enforcement official, a copy of the customer's order indicating the:

(i) Name of the customer and the name of the recipient of the alcoholic beverages or beer;

(ii) Address where the alcoholic beverages or beer is to be delivered; and

(iii) Amount of the alcoholic beverages or beer to be delivered;

(B) At least fifty percent (50%) of the delivery service's gross sales come from the delivery of food products or prepared food;

(C) Any delivery service employee who delivers alcoholic beverages or beer is twenty-one (21) years of age or older and is licensed pursuant to § 57-3-225;

(D) The delivery service is licensed pursuant to § 57-3-224;

(E) The delivery service has a written agreement with the retailer or permittee to deliver the retailer's or permittee's alcoholic beverages or beer to customers;

(F) Any delivery service employee, who delivers alcoholic beverages or beer, requires the customer to show a valid, government-issued document, such as a driver license or other form of identification deemed acceptable to the employee that includes the photograph and birth date of the customer before the customer is allowed possession of the alcoholic beverages or beer; and

(G) Any delivery made by a delivery service is made only to the physical address indicated by the individual placing the delivery order. The delivery must be documented by a verification of the delivery signed by the recipient.

(2) A delivery service described in subdivision (k)(1) shall not be prohibited from charging a fee either to customers, retailers, or beer permittees

with whom the delivery service has previously entered into a written agreement as required by subdivision (k)(1)(E) when delivering sealed packages of alcoholic beverages or beer sold by a retailer or beer permittee.

(3) If a delivery service is delivering alcoholic beverages or beer purchased from a retailer in accordance with subdivision (k)(1), the delivery service shall not deliver the alcoholic beverages or beer to a customer who resides or is located at the time of the delivery at a distance greater than one hundred (100) miles from the licensed premises of the retailer at which the alcoholic beverages or beer was purchased.

History.

Acts 1939, ch. 49, §§ 11, 12; 1943, ch. 99, § 1; 1945, ch. 167, § 8; C. Supp. 1950, §§ 6648.15, 6648.16 (Williams, §§ 6648.14, 6648.15); Acts 1970, ch. 469, § 3; 1970, ch. 518, § 1; T.C.A. (orig. ed.), § 57-142; Acts 1981, ch. 479, § 1; 1984, ch. 746, § 2; 1992, ch. 608, § 8; 1995, ch. 223, § 1; 2002, ch. 672, § 1; 2009, ch. 208, § 1; 2012, ch. 947, § 4; 2014, ch. 554, §§ 8, 9, 12, 18, 28; 2014, ch. 861, § 16; 2015, ch. 285, § 1; 2015, ch. 428, §§ 3, 4; 2016, ch. 787, §§ 2, 3; 2016, ch. 898, § 2; 2016, ch. 1045, §§ 5-8; 2016, ch. 1068, §§ 4, 5; 2018, ch. 765, § 5; 2018, ch. 783, §§ 1, 2; 2018, ch. 933, §§ 1, 2, 5.

Amendments.

The 2018 amendment by ch. 765 inserted "or food from a retailer" in the introductory language of (k)(1).

The 2018 amendment by ch. 783 rewrote (e) which read, "No retailer shall sell or give away any alcoholic beverage between eleven o'clock p.m. (11:00 p.m.) on Saturday and eight o'clock a.m. (8:00 a.m.) on Monday of each week. No retail store shall sell, give away or otherwise dispense alcoholic beverages except between the hours of eight o'clock a.m. (8:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Monday through Saturday. The store may not be open to the general public except during regular business hours. Likewise, all retail liquor stores shall be closed for business on Thanksgiving Day and Christmas Day." and rewrote (h) which read, "No retailer shall sell or give away any alcoholic beverages on the following holidays: Christmas, Thanksgiving, Labor Day, New Year's Day and the Fourth of July."

The 2018 amendment by ch. 933 added the last sentence in (g); and added (j)(3) and (k)(1)(G).

Effective Dates.

Acts 2018, ch. 765, § 8. July 1, 2018.
Acts 2018, ch. 783, § 14. April 20, 2018.
Acts 2018, ch. 933, § 7. July 1, 2018.

Cross-References.

Penalty for Class A misdemeanor, § 40-35-111.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 8, 9, 12, 15.

Law Reviews.

One Too Many: Sellers, Servers Must Know "How Much Is Too Much" to Avoid Alcohol Related Injuries (Mike Faulk), 43 Tenn. B.J. 12 (2007).

Sunday, the Sabbath, and the Blue Laws (Donald Franklin Paine), 30 Tenn. L. Rev. 249.

Attorney General Opinions.

Hours for the sale of beer in a municipality located within a Tennessee River resort district. OAG 10-92, 2010 Tenn. AG LEXIS 98 (8/17/10).

The statutory provisions that prohibit retail sales by Tennessee liquor stores on Sundays and holidays but permit Tennessee distilleries to make retail sales on Sundays and holidays do not violate the Commerce Clause or equal protection guarantees. OAG 16-08, 2016 Tenn. AG LEXIS 8 (3/1/2016).

NOTES TO DECISIONS

Analysis

1. Public Policy.
2. Civil Actions.
3. —Sales to Minors.
4. Purchase of Other Business.

1. Public Policy.

The public policy of this state is to prevent minors from purchasing, possessing, or imbibing alcoholic beverages. Brookins v. Round Table, Inc., 624 S.W.2d 547, 1981 Tenn. LEXIS 503 (Tenn. 1981), superseded by statute as stated in, Biscan v. Brown, — S.W.3d —, 2003 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 15, 2003).

With the enactment of T.C.A. § 57-3-406, the legislature clearly established a public policy against allowing a retailer from operating a

second retail business. Ledbetter v. Townsend, 15 S.W.3d 462, 1999 Tenn. App. LEXIS 642 (Tenn. Ct. App. 1999).

2. Civil Actions.

A person, who has the capacity and judgment to act responsibly in his own behalf, cannot recover damages where he actively contributes to the intoxication of another and the intoxication is the proximate cause of the injury that is the subject of the legal action. Brookins v. Round Table, Inc., 624 S.W.2d 547, 1981 Tenn. LEXIS 503 (Tenn. 1981), superseded by statute as stated in, Biscan v. Brown, — S.W.3d —, 2003 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 15, 2003).

Sections 57-10-101 and 57-10-102 governing the liability of sellers of alcohol, rather than the duties imposed by criminal statutes, determine the civil liability of the seller. Worley v. Weigel's, Inc., 919 S.W.2d 589, 1996 Tenn. LEXIS 188 (Tenn. 1996), rehearing denied, — S.W.2d —, 1996 Tenn. LEXIS 255 (Tenn. 1996).

3. —Sales to Minors.

A cause of action exists against a vendor who sells alcoholic beverages to a minor, where harm results therefrom. Brookins v. Round Table, Inc., 624 S.W.2d 547, 1981 Tenn. LEXIS 503 (Tenn. 1981), superseded by statute as stated in, Biscan v. Brown, — S.W.3d —, 2003 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 15, 2003).

4. Purchase of Other Business.

The broad language of T.C.A. § 57-3-406 suggests that a retailer who purchases a retail business also indirectly operates such a business; therefore, entering into a contract for the purchase of another retail business is impliedly prohibited by T.C.A. § 57-3-406. Ledbetter v. Townsend, 15 S.W.3d 462, 1999 Tenn. App. LEXIS 642 (Tenn. Ct. App. 1999).

57-3-407. Action against commission — Venue.

Any action brought against the commission as such shall be brought in the circuit court of Davidson County.

History.

Acts 1939, ch. 49, § 14; C. Supp. 1950, § 6648.17; impl. am. Acts 1963, ch. 257, § 41; T.C.A. (orig. ed.), § 57-143.

Law Reviews.

The Tennessee Court System — Circuit Court (Frederic S. Le Clercq), 8 Mem. St. U.L. Rev. 241.

57-3-408. Actions by attorney general to recover fees, taxes, penalties.

Whenever any person licensed under this chapter fails to account for or pay over any license fees or taxes or levies by this chapter provided, or defaults in any of the conditions of the person's bond, or whenever any person, whether licensed hereunder or unlicensed, shall have failed or refused to pay any obligations or liability, forfeiture or penalty imposed by this chapter, the commission shall report the same to the attorney general and reporter, who shall immediately institute the necessary action for the recovery of any such license fee, tax, levy, or any sum due the state of Tennessee by reason of any of the provisions of this chapter, and the district attorney general of the circuit is ordered and directed to assist the attorney general and reporter whenever required.

History.

Acts 1939, ch. 49, § 14; C. Supp. 1950, § 6648.17; impl. am. Acts 1963, ch. 257, § 42; T.C.A. (orig. ed.), § 57-144.

Law Reviews.

The Tennessee Court Systems — Prosecution, 8 Mem. St. U.L. Rev. 477.

57-3-409. Investigations by commission.

The commission is authorized to examine the books, papers and records of any wholesaler and dealer in this state for the purpose of determining whether the tax so imposed by this chapter has been fully paid, and shall have the power to investigate and examine, according to law, any premises where any

alcoholic beverage is possessed, or stored for the purpose of sale, or sold, for the purpose of determining whether this chapter is being complied with. Any refusal to permit the examination of any of such books, papers, and records, or the investigation and examination of such premises, shall constitute sufficient reason for the revocation of a license or the refusal to issue a license.

History.
Acts 1939, ch. 49, § 13; C. Supp. 1950, § 6648.19 (Williams, § 6648.16); impl. am. Acts 1963, ch. 257, § 43; T.C.A. (orig. ed.), § 57-145.

57-3-410. Grand jury investigations.

To the end that this chapter may be better enforced, the grand juries of this state shall have and are clothed with inquisitorial power to inquire into and ascertain whether or not there has been any violation of this chapter, and to return indictments in proper cases. It shall be the duty of all circuit and criminal court judges to give this law in their charges to the grand juries of the state, and all sheriffs and other peace officers charged with the enforcement of the laws of the state are also required to enforce this chapter.

History.
Acts 1939, ch. 49, § 14; C. Supp. 1950, § 6648.17; T.C.A. (orig. ed.), § 57-146.

Law Reviews.
The Tennessee Court Systems — The Jury System, 8 Mem. St. U.L. Rev. 489.

57-3-411. Contraband goods — Property subject to seizure and sale.

(a) All alcoholic beverages as defined in § 57-3-101 which are or shall be owned or possessed by any person in avoidance, evasion or violation of any of the provisions of this chapter are declared to be contraband goods, and the same may be seized by the alcoholic beverage commission, or any duly authorized representative, agent or employee of the commission, without a warrant, and such goods may be delivered to the commission for sale at public auction to the highest bidder after due advertisement. The proceeds of all such seizures shall be paid by the commission into the state treasury, and ten percent (10%) of such proceeds shall be set aside as expenses for the administration of this section.

(b) Any vehicle, not a common carrier, which may be used for transportation for the purpose of distribution, gift or sale of untaxed alcoholic beverages shall likewise be subject to confiscation and sale, in the same manner as above provided. Should any alcoholic beverages in excess of five gallons (5 gals.) be found in any vehicle without receipts or other prescribed documents demonstrating that the tax under this chapter has been paid, the same shall be prima facie evidence that it was there for gift, sale or distribution.

(c) In all cases of seizure of any alcoholic beverages, or other property subject to forfeiture under this chapter, the officer or other person making the seizure shall proceed as follows:

(1) The officer or other person shall deliver to the person, if any, found in possession of such property, a receipt, showing a general description of the seized goods. A copy of the receipt shall be filed in the office of the commission and shall be open to the public for inspection;

(2) All such property seized and confiscated under this chapter may be

sold at public sale by the commissioner of general services when the same has been turned over to the commissioner by the commission as now authorized by law;

(3) Any person claiming any property so seized as contraband may within ten (10) days from the date of seizure, file with the commission at Nashville a claim in writing, requesting a hearing and stating the person's interest in the articles seized. The commission shall set a date for hearing within ten (10) days from the day the claim is filed. Any decision of the commission adverse to any claimant may be reviewed in the manner now provided by law for the review of actions of boards or commissions as prescribed by title 27, chapter 9;

(A) In the event the ruling of the commission is favorable to the claimant, the commission shall deliver to the claimant the alcoholic beverages or other property so seized. If the ruling of the commission is adverse to the claimant, the commission shall proceed to sell such contraband goods in accordance with the foregoing provisions of this section, unless the claimant shall secure a supersedeas under § 27-9-106, or unless the claimant shall give a bond under subdivision (c)(3)(B).

(B) When the ruling of the commission is adverse to the claimant, the alcoholic beverages or property so seized shall be delivered to the claimant. Such claimant shall give a bond payable to the state of Tennessee in an amount double the value of the property seized, with sureties approved by the commission. The condition of the bond shall be that the obligors shall pay to the state, through the commission, the full value of the goods or property seized, unless upon certiorari the decision of the commission shall be reversed and the right of the claimant to such property is judicially determined.

(C) If no claim is interposed, such alcoholic beverages or other property shall be forfeited without further proceedings and the same shall be sold as herein provided. The above procedure is the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, injunction or in any other manner.

(d) If, incidental to a confiscation of contraband as defined herein, there is discovered any beer as defined in § 57-5-101(b) deemed to be held or transported illegally within the purview of § 57-5-409, or any tobacco products deemed to be held or transported illegally within the purview of § 67-4-1020, the confiscating officer is hereby empowered and required to seize such beer or tobacco, notwithstanding the fact that such officer may not otherwise be empowered to take such action under § 57-5-409 or § 67-4-1020. Any beer or tobacco seized pursuant hereto shall be delivered promptly as provided by § 57-5-409 or § 67-4-1020, whichever is appropriate, to the department of revenue for sale or disposition as contraband in accordance with chapter 5 of this title or title 67, chapter 4, part 10, whichever is appropriate.

(e) In all cases of seizure or confiscation of property under this chapter where the commission does not sell such property at public auction, the commission may destroy such property after resolution of the criminal or administrative process; provided, that the property is of nominal value in comparison to the cost of a public sale.

History.

Acts 1939, ch. 49, § 19; C. Supp. 1950, § 6648.20 (Williams, § 6648.22); impl. am. Acts 1959, ch. 9, § 14; Acts 1959, ch. 301, § 1; impl. am. Acts 1961, ch. 97, § 5; impl. am. Acts 1963, ch. 257, § 45; impl. am. Acts 1972, ch. 543, § 7; Acts 1973, ch. 68, § 5; T.C.A. (orig. ed.), § 57-147; Acts 1992, ch. 608, §§ 9-11; 2009, ch. 434, § 10; 2014, ch. 861, § 6; 2017, ch. 147, §§ 15, 17, 18.

Cross-References.

Sale on execution, § 26-5-107.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 15, 26, 28.

Law Reviews.

The Tennessee Court System — Circuit Court (Frederic S. Le Clercq), 8 Mem. St. U.L. Rev. 241.

NOTES TO DECISIONS

Analysis

1. Nature of Statute.
2. Relation to Other Statutes.
3. Jurisdiction of Commission.
4. —Exclusiveness of Jurisdiction Once Attached.
5. Power and Duties of Sheriff.
6. Legality of Possession.
7. Extent of Right of Search and Seizure.
8. Transportation Through State.
9. Failure to Follow Statutory Procedure.
10. Disposition of Seized Liquor.
11. Levy Against Seized Liquor.
12. Power of Circuit Court to Return Contraband.

1. Nature of Statute.

Provision of T.C.A. § 57-3-411 that such goods "may be seized" is permissive and not mandatory. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

Primarily T.C.A. § 57-3-411 is a revenue measure to enforce payment of the liquor tax. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

The "bone dry law," former § 39-2506 et seq., prohibiting the receiving, possession and transporting from place to place within the state was not repealed by implication by enactment of the local option law, since the purpose of the local option law was to provide exceptions to the general law of exclusion and prohibition to apply under particular conditions and in restricted territory, subject to detailed regulation. Renfro v. State, 176 Tenn. 638, 144 S.W.2d 793, 1940 Tenn. LEXIS 112 (1940).

2. Relation to Other Statutes.

This chapter does not work a repeal by implication of the provisions of the existent provisions of the law relating to the reception, possession and transportation of intoxicating liquors but is in the nature of a proviso to the general statutes of prohibition. Chadrick v. State, 175 Tenn. 680, 137 S.W.2d 284, 1939 Tenn. LEXIS 92 (1940).

This section does not repeal in toto the provisions of T.C.A. § 57-9-103 et seq., directing the sheriff and other peace officers to seize intoxicating liquors possessed in violation of the laws of the state and to hold such liquors pending further orders and their disposition by the circuit or criminal court. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

3. Jurisdiction of Commission.

The jurisdiction conferred on the commission to seize contraband liquors and direct a disposition of the same is not exclusive but is concurrent with the jurisdiction of the courts conferred by T.C.A. § 57-9-103 et seq. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

4. —Exclusiveness of Jurisdiction Once Attached.

This section contains a provision regulating reclamation procedure before the commission, and provides "the above procedure is the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, injunction or in any other manner," which prohibition against interference by the courts relates to cases where the commission has seized the liquors or the vehicle; and no court is to interfere with its jurisdiction in such cases after that jurisdiction has attached. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

5. Power and Duties of Sheriff.

Where the sheriff seizes liquor under his authority as a police officer and not as an agent or representative of the commission such liquors remain in his custody until it is determined by the court whether or not they were legally in the possession of the person from whom they were seized and if at that time they are found to be contraband goods the court might then properly entertain an application by the commission to possess the goods and sell them for the benefit of the treasury. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

It is the duty of a sheriff to deliver liquors seized by him to the commission only when the sheriff is acting as agent or representative of the commission. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

Where seizure of intoxicating liquors and truck in which they were contained was under

the general authority conferred on the sheriff by T.C.A. § 57-9-103 et seq., and not under the revenue statutes, the seizure of the truck was without authority and the court could not direct its holding. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

6. Legality of Possession.

Where a defendant was found in possession of alcoholic beverages on which no tax had been paid and none of the conditions and regulations prescribed by the local option law had been complied with the possession was unlawful within the meaning of the general provisions of the law notwithstanding the fact that the territory in which it was found had been conditionally set aside for lawful possession by local option. Chadrick v. State, 175 Tenn. 680, 137 S.W.2d 284, 1939 Tenn. LEXIS 92 (1940).

7. Extent of Right of Search and Seizure.

Where one of a group of officers entered a public place operated by defendant, purchased a bottle of whiskey from defendant who had no license to sell intoxicating liquors, and then signaled the other officers who entered and arrested defendant who made no protest or demand for a warrant and where upon entry the officers saw a case of whiskey under a bed in an adjoining room and as a result entered and found a large quantity of whiskey in such room, such officers were justified in entering and looking about for additional whiskey and there was never at any time a "search" so as to support the contention of defendant that the whiskey was seized as a result of an unlawful search. McCanless v. Evans, 177 Tenn. 86, 146 S.W.2d 354, 1940 Tenn. LEXIS 15 (1941).

8. Transportation Through State.

Unstamped liquor being transported from Illinois through Tennessee to Mississippi for purpose of sale in that state in violation of the laws of such state was not subject to seizure in Tennessee under this statute as contraband goods but were immune from such seizure as goods in interstate commerce. McCanless v. Graham, 177 Tenn. 57, 146 S.W.2d 137, 1940 Tenn. LEXIS 11 (1941).

Taxicab used in transporting untaxed liquor through the state was subject to seizure under this section even though such vehicle was only being used for transporting such liquor from one state through Tennessee to another state. Dye v. McCanless, 185 Tenn. 18, 202 S.W.2d 657, 1947 Tenn. LEXIS 294 (1947).

9. Failure to Follow Statutory Procedure.

Seizure of car on charge of use in transporting unstamped liquors did not result in forfeiture where statutory procedure for forfeiture was not followed. Wells v. McCanless, 184 Tenn. 293, 198 S.W.2d 641, 1947 Tenn. LEXIS 379 (1947).

10. Disposition of Seized Liquor.

The sale of contraband liquors seized under this section is required. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

Where officers seized a large quantity of whiskey illegally in possession of a person who was not a licensed dealer, such person was not entitled to the return of the whiskey as to do so would make him a criminal when he became repossessed of it. McCanless v. Evans, 177 Tenn. 86, 146 S.W.2d 354, 1940 Tenn. LEXIS 15 (1941).

Despite the acquittal of a defendant from whom liquor was seized, a circuit court had no authority to return the liquor to the defendant, and it had to be sold as contraband in accordance with T.C.A. §§ 57-9-201 — 57-9-204. Alcoholic Beverage Com. v. Simmons, 512 S.W.2d 585, 1973 Tenn. Crim. App. LEXIS 225 (Tenn. Crim. App. 1973).

11. Levy Against Seized Liquor.

Where, while a prosecution was pending against a judgment debtor for unlawful possession of intoxicating liquor in his residence from which it was taken by officers, a garnishment execution was levied on such liquor, it was held that if it be found upon the criminal trial that the judgment debtor was in the lawful possession of the liquor, the judgment creditor has acquired a lien upon the same by the levy of the execution by garnishment, but if he is found to have been in possession unlawfully, even though accused is acquitted because of an illegal search, or for lack of legal evidence upon which to convict him, then the commission may intervene by petition asserting its jurisdiction to possess the liquors and sell them for the benefit of the treasury. Carmack v. Nichols, 181 Tenn. 551, 181 S.W.2d 977, 1944 Tenn. LEXIS 276 (1944).

12. Power of Circuit Court to Return Contraband.

Where the Alcoholic Beverage Commission seized contraband liquor from a defendant charged with illegal possession and the charge was nolle prossed, the court held that a jury verdict of acquittal was not binding on the court or the commission with regard to the disposition of the confiscated liquor; that, under this and related statutes, a circuit court had no authority to order the return of the liquor to the defendant; and that the liquor had to be sold as contraband in accordance with T.C.A. §§ 57-9-201 — 57-9-204. Alcoholic Beverage Com. v. Simmons, 512 S.W.2d 585, 1973 Tenn. Crim. App. LEXIS 225 (Tenn. Crim. App. 1973).

57-3-412. Criminal offenses — Penalties — Perjury — Expunction of records — Enforcement of law — Violations by and relating to minors.

(a)(1) Except as otherwise provided, a violation of this chapter is a Class A misdemeanor.

(2) If any person shall, or shall attempt to, forge or counterfeit, or cause or permit to be forged or counterfeited, any stamp, die, plate, official signature, certificate, evidence of tax payment, license, or other instrument which has been provided or may be hereafter provided, made or used in the pursuance of the execution of this chapter as aforementioned, upon any paper or other material, or shall stamp or mark, or cause to be stamped or marked, any paper, or other material by such forged or counterfeited stamp, die, plate, official signature, certificate, evidence of tax payment, license or other instrument as aforementioned, or shall forge the name or signature of any officer, commissioner, deputy officer, or employee under this chapter or under the rules and the regulations of the commission, or cause the same to be done, or forge or counterfeit, or cause or permit to be forged or counterfeited, any evidence of the payment of any tax provided for in this chapter, with intent to defraud the state of any of the taxes imposed by this chapter, or any provision thereof, or shall in any otherwise, by imitating, restoring, altering, or reusing any stamp or other written evidence of the payment of such taxes knowingly defraud or attempt to defraud the state, or have or retain in such person's possession any of such stamps which are forged or counterfeited, or any such evidence of such payment, or any stamp which has been altered, restored or counterfeited with intent to defraud the state, such person shall be punished for criminal conspiracy.

(3)(A) It is unlawful for any person under the age of twenty-one (21) years to have in such person's possession or to consume any intoxicating liquor or beer for any purpose, whether the same be possessed or consumed in a dry county or a wet county. It is unlawful for any person under twenty-one (21) years of age to transport any intoxicating liquor or beer for any purpose, whether the same be transported in a dry or wet county; provided, that this section shall not be construed as prohibiting any person eighteen (18) years of age or older from transporting, possessing, selling or dispensing intoxicating liquor or beer in the course of such person's employment. For purposes of this subdivision (a)(3), "beer" shall have the same meaning as provided in § 57-6-102.

(B) A violation of subdivision (a)(3)(A) is a Class A misdemeanor.

(C) Any person under twenty-one (21) years of age found to have violated this subdivision (a)(3) shall, regardless of the final disposition of such violation, have the right to have the records, as defined in § 40-32-101, of such violation destroyed after the passage of six (6) months from the date of the violation. Such destruction shall occur upon motion of the person to the court which heard the violation and shall be without cost to such person. No violation of this subdivision (a)(3) may at any time be used against the violator in any criminal proceeding.

(4) Any person who purchases an alcoholic beverage for or at the request of a person under twenty-one (21) years of age commits a misdemeanor and,

upon conviction for such person's first such offense, shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than five hundred dollars ($500), plus all penalties imposed by § 39-15-404. Upon a person's second or subsequent conviction for such offense, such person shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000), plus all penalties imposed by § 39-15-404.

(5)(A) It is unlawful for any person who is younger than twenty-one (21) years of age to purchase or attempt to purchase any alcoholic beverage.

(B) A violation of this subdivision (a)(5) is a Class A misdemeanor.

(C)(i) In addition to any criminal penalty established by this section, a court in which a person younger than twenty-one (21) years of age but eighteen (18) years of age or older is convicted of the purchase or attempt to purchase or possession of alcoholic beverages in violation of this section shall prepare and send to the department of safety, driver control division, within five (5) working days of the conviction, an order of denial of driving privileges for the offender.

(ii) The court and the department shall follow the same procedures and utilize the same sanctions and costs for a person younger than twenty-one (21) years of age but eighteen (18) years of age or older as provided in title 55, chapter 10, part 7, for offenders younger than eighteen (18) years of age but thirteen (13) years of age or older.

(b)(1) The members of the highway patrol shall be authorized and it shall be their duty to assist the county and municipal police authorities to enforce this chapter, and any other chapter relating to the manufacture, sale or distribution of alcoholic beverages, as defined in § 57-3-101, in any county or municipality, failing to adopt the rights granted under the various provisions of this chapter.

(2) Inspectors, agents or officers appointed by the commission shall be cloaked with and have the duty, power and authority to exercise the same functions and duties as conferred by law upon the highway patrol in the illegal traffic of intoxicating liquors. Inspectors, agents and officers of the commission shall have concurrent authority with the highway patrol in the enforcement of title 55, chapters 7-10 and 50 for the express purpose of enabling the commission properly to enforce the laws and regulations pertaining to traffic in alcoholic beverages.

(c) Any person under twenty-one (21) years of age who knowingly makes a false statement or exhibits false identification to the effect that the person is twenty-one (21) years old or older to any person engaged in the sale of alcoholic beverages for the purpose of purchasing or obtaining the same commits a misdemeanor. In addition to any criminal penalty established by this subsection (c), a court in which a person younger than twenty-one (21) years of age but eighteen (18) years of age or older is convicted under this subsection (c) of a second or subsequent offense shall prepare and send to the department of safety, driver control division, within five (5) working days of the conviction, an order of denial of driving privileges for the offender for a period not to exceed one (1) year. The offender may apply to the court for a restricted driver license. The judge shall order the issuance of a restricted motor vehicle operator's license, in accordance with § 55-50-502. The court and the department shall

follow the same procedures and utilize the same costs for a person younger than twenty-one (21) years of age but eighteen (18) years of age or older as provided in title 55, chapter 10, part 7, for offenders younger than eighteen (18) years of age but thirteen (13) years of age or older.

(1) If the person violating this subsection (c) is less than eighteen (18) years of age, that person shall be punished by a fine of fifty dollars ($50.00) and not less than twenty (20) hours of community service work, which fine or penalty shall not be suspended or waived. The fine imposed by this subdivision (c)(1) shall apply regardless of whether the violator cooperates with law enforcement officers by telling them the place the alcohol was purchased or obtained or from whom it was purchased or obtained.

(2) If the person violating this subsection (c) is eighteen (18) years of age or older but less than twenty-one (21) years of age, that person shall be punished by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200) or by imprisonment in the county jail or workhouse for not less than five (5) days nor more than thirty (30) days. The penalties imposed by this subdivision (c)(2) apply regardless of whether the violator cooperates with law enforcement officers by telling them the place the alcohol was purchased or obtained or from whom it was purchased or obtained.

History.

Acts 1939, ch. 49, § 15; C. Supp. 1950, § 6648.21 (Williams, § 6648.18); Acts 1955, ch. 347, § 4; impl. am. Acts 1959, ch. 9, § 14; Acts 1963, ch. 223, § 1; impl. am. Acts 1963, ch. 257, § 46; 1967, ch. 148, § 1; 1970, ch. 398, § 3; impl. am. Acts 1979, ch. 413, § 1; T.C.A. (orig. ed.), § 57-148; Acts 1984, ch. 1006, §§ 6, 11, 12, 17; 1985, ch. 321, § 1; 1986, ch. 758, § 2; 1986, ch. 788, § 2; 1989, ch. 591, §§ 62, 111, 113; 1991, ch. 473, § 1; 1992, ch. 608, § 12; 2003, ch. 375, § 1; 2006, ch. 900, § 4; 2006, ch. 986, §§ 1, 2.

Code Commission Notes. The Criminal Sentencing Reform Act of 1989 amended the provisions of § 57-3-412(a) relative to violation of local option traffic in intoxicating liquors, but contained no reference to purchases by underaged persons, specified in subdivision (a)(4), or for direct purchases by underaged persons, specified in subsection (c).

Cross-References.

Eighteen-year-olds, legal responsibility, alcoholic beverage restrictions on persons under 21, § 1-3-113.

False representations by minors, §§ 57-4-203, 57-5-301.

Penalty for Class A misdemeanor, § 40-35-111.

Purchase or possession by minors, § 57-4-203.

Sales to minors prohibited, § 57-4-203.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 28.

Law Reviews.

Criminal Law and Procedure — 1963 Tennessee Survey (Robert E. Kendrick), 17 Vand. L. Rev. 977.

Attorney General Opinions.

Destruction of records—juvenile court—alcohol violations by a minor, OAG 92-68 (12/28/92).

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Authority of Highway Patrol.
3. Charge of Specific Offense.
4. Instructions of Court.
5. Civil Actions.

1. Constitutionality.

The provisions of this section authorizing the highway patrol to assist local authorities in the enforcement of this or any other law relating to alcoholic beverages is not unconstitutional as introducing matter independent of the general subject of the original act but is a natural

incident of the purpose of such act which is indicated in the caption as dealing with a general subject of regulation of liquor. Vickers v. State, 176 Tenn. 415, 142 S.W.2d 188, 1939 Tenn. LEXIS 132 (1940).

2. Authority of Highway Patrol.

Provision of this section conferring upon the highway patrol the right to assist county and municipal police authorities in the enforcement of this or any other law relating to alcoholic beverages does not limit the authority of the officers of the highway patrol to those cases in which they are acting in conjunction with the local officers or summoned by the local officers but was intended to assist the body of local officials in enforcement generally of a general law. Vickers v. State, 176 Tenn. 415, 142 S.W.2d 188, 1939 Tenn. LEXIS 132 (1940).

The provisions of this section conferring on the highway patrol the authority "to enforce the provisions of this act or any other act relating to ... alcoholic beverages" includes the execution of search warrants. Vickers v. State, 176 Tenn. 415, 142 S.W.2d 188, 1939 Tenn. LEXIS 132 (1940).

3. Charge of Specific Offense.

City warrant and resulting judgment charging defendant generally with violating municipal ordinance which implies violation of this chapter are void as not giving reasonable notice of offense charged, since chapter contains many different acts variously designated as misdemeanors or felonies. Robinson v. Memphis, 197 Tenn. 598, 277 S.W.2d 341, 1955 Tenn. LEXIS 325 (1955).

4. Instructions of Court.

Where defendant was indicted for selling liquor without the license required by § 57-3-204, the penalty for which was specified by § 57-3-412 as a mandatory fine and discretionary imprisonment, but trial court instructed jury as to punishment as provided in former § 39-2502 for unlawful sale of liquor under bone dry law which specified larger maximum fine and mandatory imprisonment, defendant was entitled to new trial even though fine and imprisonment assessed by jury was within the limits of both of the statutes. Judkins v. State, 224 Tenn. 587, 458 S.W.2d 801, 1970 Tenn. LEXIS 359 (1970).

5. Civil Actions.

Sections 57-10-101 and 57-10-102 governing the liability of sellers of alcohol, rather than the duties imposed by criminal statutes, determine the civil liability of the seller. Worley v. Weigel's, Inc., 919 S.W.2d 589, 1996 Tenn. LEXIS 188 (Tenn. 1996), rehearing denied, — S.W.2d —, 1996 Tenn. LEXIS 255 (Tenn. 1996).

57-3-413. Criminal trespass charge in violation of § 39-14-405.

(a) A person may be charged with a violation of § 39-14-405, if the person is:

(1) Between eighteen (18) and twenty-one (21) years of age;

(2) Visibly intoxicated; or

(3) Otherwise disruptive; and

(4) Such person is asked by the owner or employee of an establishment that is licensed as a retail package store pursuant to § 57-3-204 to leave the premises, and that person remains on the premises.

(b) If a person is a minor under eighteen (18) years of age and is asked by the owner or employee of an establishment that is licensed as a retail package store pursuant to § 57-3-204 to leave the premises, and the minor remains on the premises, such minor commits a delinquent act.

History.

Acts 2012, ch. 899, § 1.

57-3-414. Sale of powdered or crystalline alcohol prohibited — Offense — Penalties.

(a) No person shall sell or offer for sale for human consumption powdered or crystalline alcohol.

(b) Subsection (a) does not apply to any of the following:

(1) Any substance regulated by the food and drug administration in the United States department of health and human services that is not either of the following:

(A) Beer or intoxicating liquor; or

(B) A compound that could be converted into beer or intoxicating liquor;

(2) A medication that requires a prescription; or

(3) An over-the-counter medication.

(c) A violation of subsection (a) is a Class A misdemeanor. In addition to any criminal penalty imposed by this subsection (c), the commission may suspend or revoke any license or permit issued under this title held by any person who violates subsection (a).

(d) As used in this section:

(1) "Over-the-counter medication" means medication that may be legally sold and purchased without a prescription;

(2) "Powdered or crystalline alcohol" means a product that is manufactured into a powdered or crystalline form and that contains any amount of alcohol; and

(3) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

History.
Acts 2015, ch. 311, § 1.

Cross-References.
Penalty for Class A misdemeanor, § 40-35-111.

PART 5

MUNICIPAL INSPECTION FEES

57-3-501. Municipal inspection fee — Maximum amount — Collection of fees.

(a)(1) A municipality as defined by § 57-3-101 shall have the authority to impose by ordinance an inspection fee upon licensed retailers of alcoholic beverages as defined by § 57-3-101 or upon retail food store wine licensees located within such municipality.

(2) If, pursuant to § 57-3-204(d)(7), a manufacturer of high alcohol content beer obtains a retail license to sell its products which are manufactured on the manufacturer's premise, the governing body of the municipality or county in which such a manufacturer is located shall impose by ordinance or resolution, as appropriate, a fifteen-percent inspection fee to inspect the retail store in which such products are sold by the manufacturer. Such inspection fee shall be imposed on the wholesale price of the high alcohol content beer supplied pursuant to § 57-3-204(d)(7)(B) by a wholesaler for those products manufactured and sold by the manufacturer at its retail store as authorized pursuant to § 57-3-204(d)(7).

(b) The inspection fees shall not exceed eight percent (8%) of the wholesale price of alcoholic beverages supplied by a wholesaler in municipalities located in counties of this state having a population of less than sixty thousand (60,000), according to the 1960 federal census or any subsequent federal

census, or in counties that contain a municipal corporation as defined in § 67-6-103(a)(3)(B)(i), notwithstanding subsection (c) to the contrary.

(c) The inspection fees shall not exceed five percent (5%) of the wholesale price of alcoholic beverages supplied by a wholesaler in municipalities located in counties of this state having a population of more than sixty thousand (60,000), according to the 1960 federal census or any subsequent federal census.

(d) Any municipality having a metropolitan form of government and a population of over four hundred fifty thousand (450,000), according to the 1990 federal census or any subsequent federal census, which has levied the inspection fees herein authorized may, by ordinance of its legislative body, designate the county clerk as the collector of the fees for the entire metropolitan taxing jurisdiction.

History.

Acts 1968, ch. 538, §§ 1, 2; 1969, ch. 87, § 1; T.C.A., § 57-165; Acts 1994, ch. 758, § 1; 1999, ch. 218, § 1; 2011, ch. 448, § 17; 2014, ch. 554, § 7.

Compiler's Notes.

For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Cross-References.

Damaged or unaccepted goods, tax liability, § 57-3-109.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 5, 10.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Nature of Fee.
3. Construction with Other Statutes.
4. Liquor by the Drink Establishments.

1. Constitutionality.

Since the municipal inspection fee authorized by this section is collected by the wholesaler only after the retailer has purchased and paid for the alcoholic beverages (pursuant to T.C.A. § 57-3-502), the fee does not violate the prohibition against import duties of U.S. Const., art. 1, § 10. Memphis Retail Liquor Dealers' Asso. v. Memphis, 547 S.W.2d 244, 1977 Tenn. LEXIS 555 (Tenn. 1977).

2. Nature of Fee.

Even though the revenue generated by a municipal inspection fee pursuant to this section far exceeds the cost of inspection, the fee is a regulation and not a tax, for alcoholic beverages are a special activity and the fee imposed is actually part of the regulation. Memphis Retail Liquor Dealers' Asso. v. Memphis, 547 S.W.2d 244, 1977 Tenn. LEXIS 555 (Tenn. 1977).

3. Construction with Other Statutes.

Since T.C.A. § 57-6-201 deals with wholesalers only it does not preempt this section, which deals with retailers only. Memphis Retail Liquor Dealers' Asso. v. Memphis, 547 S.W.2d 244, 1977 Tenn. LEXIS 555 (Tenn. 1977).

T.C.A. § 67-4-701 does not repeal T.C.A. § 57-3-501 by implication because that section is an ad valorem tax while this is a fee. Memphis Retail Liquor Dealers' Asso. v. Memphis, 547 S.W.2d 244, 1977 Tenn. LEXIS 555 (Tenn. 1977).

In taxpayers' action seeking a refund of inspection fees a city erroneously calculated, the trial court did not err by applying T.C.A. § 67-1-1807 because payment under protest was not a condition precedent to a suit for the recovery of a tax paid to a municipality; the tax at issue provided no explicit requirement to pay "under protest" but only provided that the inspection fee was to be paid to a municipality. Chuck's Package Store v. City of Morristown, — S.W.3d —, 2016 Tenn. App. LEXIS 446 (Tenn. Ct. App. Feb. 10, 2016).

4. Liquor by the Drink Establishments.

Liquor by the drink establishments are granted a license under T.C.A. § 57-4-201, and therefore do not qualify as "retailers" under T.C.A. § 57-3-501. Overton Square, Inc. v. Foster, 615 S.W.2d 681, 1981 Tenn. App. LEXIS 492 (Tenn. Ct. App. 1981).

57-3-502. Collection by wholesaler from retailer.

The inspection fee shall be collected by the wholesaler from the retailer following notice given the wholesaler by the municipality that an inspection fee has been imposed by ordinance upon the retailers located within the particular municipality. The inspection fee shall be collected by the wholesaler at the time of the sale or at the time the retailer makes payment for the delivery of the alcoholic beverages.

History.
Acts 1968, ch. 538, § 3; T.C.A., § 57-166.

57-3-503. Monthly report and payment — Reimbursement of wholesalers — Penalty — Audits.

(a) Each wholesaler making sales to retailers located within a municipality imposing an inspection fee shall furnish the municipality a report monthly, which report shall contain a list of the alcoholic beverages sold to each retailer located within the municipality, the wholesale price of the alcoholic beverages sold to each retailer, the amount of tax due, and such other information as may be required by the municipality. The monthly report shall be furnished the municipality imposing the tax not later than the twentieth of the month following which the sales were made. The inspection fees collected by the wholesaler from the retailer or retailers located within each municipality shall be paid to the municipality at the time the monthly report is made. Wholesalers collecting and remitting the above inspection fee to municipalities shall be entitled to reimbursement for this collection service, a sum equal to five percent (5%) of the total amount of inspection fees collected and remitted, such reimbursement to be deducted and shown on the monthly report to the municipality.

(b) Failure to collect or timely report and/or pay the inspection fee collected shall result in a penalty of ten percent (10%) of the fee due the municipality which shall be payable to the municipality imposing the inspection fee.

(c) Municipalities to whom inspection fees are paid shall have authority to audit the records of wholesalers reporting to them in order to determine the accuracy of such reports.

History.
Acts 1968, ch. 538, §§ 4, 5, 7; T.C.A., § 57-167.

57-3-504. Fee to be exclusive — Metropolitan governments.

(a) The inspection fee provided for herein shall be in lieu of all other gross receipt or inspection fees imposed upon wholesalers or retailers of alcoholic beverages by municipalities and no other additional or similar fees shall be imposed by ordinance.

(b) No municipality shall impose any inspection fee or similar tax upon wholesalers based upon sales made to retail dealers located in other municipalities, it being the legislative intent that a municipality shall have authority

to impose the inspection fee provided for herein only upon retailers located within the particular municipality imposing the inspection fee.

(c)(1) Notwithstanding anything herein provided to the contrary, the principal municipality, in a county which has adopted the metropolitan form of government under title 7, chapters 1-3, or which may hereafter adopt such form of government, may impose an inspection fee or similar fee, under the authority of chapter 3, part 5 of this title, upon wholesalers based on sales made to licensed retailers located in other but smaller municipalities within the same county as the principal municipality;

(2) "Principal municipality," for the purpose of this subsection (c), means the largest municipality, or its successor, within such a county in accordance with the 1960 federal census or subsequent federal census;

(3) When such principal municipality imposes such a fee upon wholesalers, they shall collect same from the sales to retailers within the smaller municipalities and remit such collections to the principal municipality unless and until such smaller municipalities adopt by ordinance or resolution, such fees in accordance with the terms of chapter 3, part 5 of this title, and then the wholesalers will remit such collections to the smaller municipalities in accordance with the provisions of such ordinances or resolutions as may be adopted or passed by them.

History.
Acts 1968, ch. 538, § 6; T.C.A., § 57-168.

Textbooks.
Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 10.

NOTES TO DECISIONS

1. Exclusivity of Fee.
Although this section purports to be exclusive, it does not prevent the legislature from subsequently imposing a privilege tax on the sale of alcohol. Memphis Retail Liquor Dealers' Asso. v. Memphis, 547 S.W.2d 244, 1977 Tenn. LEXIS 555 (Tenn. 1977).

PART 6

NONRESIDENT SELLER'S PERMITS

57-3-601. Short title.

This part shall be known as the "Nonresident Liquor Seller's Permit Act of 1981."

History.
Acts 1981, ch. 157, § 1.

57-3-602. When permit required — Exceptions.

(a) A nonresident seller's permit is required of any manufacturer, distillery, winery, importer, broker, or person which sells or distributes alcoholic beverages to any wholesaler licensed under § 57-3-203 or any manufacturer licensed under § 57-3-202, regardless of whether the sale is consummated

inside or outside Tennessee. No such permit is required if such manufacturer, distillery or winery is operating pursuant to § 57-2-104, § 57-3-202, § 57-3-203 or § 57-3-207.

(b)(1) A nonresident seller's permit is also required of any importer, broker, or other entity that imports alcoholic beverages into this state for the purpose of the following:

(A) Warehousing wine and other alcoholic beverage in the state for the purpose of sale to entities legally authorized to purchase such wine and alcoholic beverages outside this state;

(B) Selling wines which are not registered pursuant to § 57-3-301 and which are not capable of being registered in that no qualified manufacturer, winery or distiller exists to approve such registration; provided, that such sales within the state shall be permitted only to wholesalers licensed pursuant to § 57-3-203; and

(C) Selling wines which are registered pursuant to § 57-3-301 but as to which vintages are not available from the manufacturer, winery, or distiller, but such sales shall be permitted only to those wholesalers authorized to distribute such wines by the manufacturer, winery, or distiller as identified on the registration records of the department of revenue.

(2) A nonresident seller licensed under this subsection (b) is not subject to § 57-3-607.

(c)(1) A non-manufacturer non-resident seller's permit is required of any entity that is engaged in marketing, licensing of trademark or trade name, or contracting for the manufacture of any wine, distilled spirit or other alcoholic beverage, where such entity is not directly engaged in the manufacturing, bottling, distilling, blending of such wine, spirit or alcoholic beverage, and is not the holder of a basic permit issued by the alcohol and tobacco tax and trade bureau of the United States department of the treasury as a brewery, distilled spirits plant, or winery. A non-manufacturer non-resident seller's permit under this part may be issued by the commission irrespective of the residence of the entity.

(2) The holder of a non-manufacturer non-resident seller's permit issued under subdivision (c)(1) shall be authorized to market, facilitate the sale of, possess intellectual property rights relating to, or cause to be distributed any wine, distilled spirit or other alcoholic beverage to wholesalers licensed pursuant to § 57-3-203.

(3) The holder of a non-manufacturer non-resident seller's permit may contract with distillers, wineries, and other manufacturers to produce, rectify, bottle or manufacture wine or distilled spirits on its behalf, may ship or cause to be shipped into or within this state alcoholic beverages as an element of sales made to wholesalers licensed under § 57-3-203 and may contract with wholesalers to purchase such products.

(4) Non-manufacturer non-resident seller's permit holders may take title of and store in this state alcoholic beverages and wine from a distiller or winery to which it holds marketing, licensing or trademark rights only if the non-manufacturer non-resident seller's permit holder possesses a basic permit from the alcohol and tobacco tax and trade bureau of the United

States department of the treasury, has paid an additional annual fee of three thousand dollars ($3,000) to the commission, and is storing such alcoholic beverages or wine in a location approved by the commission for storage of untaxed alcoholic beverages or wine. The department of revenue may require the posting of a bond for such storage.

History.
Acts 1981, ch. 157, § 2; 2011, ch. 448, §§ 1, 6; 2014, ch. 767, § 1; 2015, ch. 269, § 3.

Code Commission Notes. Section 57-3-608, formerly referred to in this section, was repealed by Acts 2012, ch. 968, § 4, effective May 10, 2012; therefore, the reference was deleted from the section by authority of the code commission in 2013.

57-3-603. Authorized transactions.

Except as otherwise provided in § 57-3-602(c), the holder of a nonresident seller's permit is authorized to:

(1) Solicit and take orders for alcoholic beverages from wholesalers licensed under § 57-3-203; and

(2) Ship or cause to be shipped into this state alcoholic beverages in consummation of sales made to wholesalers licensed under § 57-3-203.

History.
Acts 1981, ch. 157, § 3; 2014, ch. 767, § 2.

57-3-604. Prohibited actions.

No holder of a nonresident seller's permit, nor any officer, director, agent, or employee of the holder, nor any affiliate of the holder, regardless of whether the affiliation is corporate or by management, direction, or control, may do any of the following:

(1) Have an interest, direct, or indirect in any business licensed under §§ 57-3-204 and 57-4-101;

(2) Fail to make or file a report with the commission as required by rule of the commission;

(3) Sell liquor for resale inside this state that fails to meet the standards of quality, purity, and identity prescribed by the commission;

(4) Advertise any liquor contrary to the laws of this state or to the rules of the commission, or sell liquor for resale in this state in violation of advertising or labeling rules of the commission;

(5) Sell liquor for resale inside this state or cause it to be brought into the state in a size of container prohibited by this code or by rule of the commission;

(6) Solicit or take orders for liquor from a person not authorized to import liquor into this state for the purpose of resale;

(7) Induce, persuade, or influence, or attempt to induce, persuade or influence, a person to violate this code or a rule of the commission, or conspire with a person to violate this code or a rule of the commission; or

(8) Exercise a privilege granted by a nonresident seller's permit while an order or suspension against the permit is in effect.

History.
Acts 1981, ch. 157, § 4; 2012, ch. 968, § 2.

57-3-605. Application for permit — Annual fee — Expiration date — Verified statement.

(a) Any manufacturer, distillery, winery, importer or other person desiring to obtain a nonresident seller's permit may make application for such to the commission on forms provided by the commission.

(b) In addition, every applicant shall pay to the commission an annual permit fee which is established at one hundred and fifty dollars ($150) if such applicant shall have shipped, sold or otherwise distributed fewer than one hundred (100) cases of any alcoholic beverage in this state in the year immediately preceding application. If such applicant shall have shipped, sold or otherwise distributed one hundred (100) cases or more of any alcoholic beverage in this state in the year immediately preceding application, it shall pay an annual permit fee of two hundred fifty dollars ($250) to the commission.

(c) Each permit shall be valid for one (1) calendar year.

(d) Any wholesaler, holding a license issued pursuant to § 57-3-203, shall be authorized to act as an importer of alcoholic beverages and wine if such wholesaler holds a basic permit issued pursuant to the Federal Alcohol Administration Act (27 U.S.C. § 201 et seq.), as an importer, advises the commission of its intent to act as an importer, pays an additional annual fee of two hundred fifty dollars ($250) to the commission and otherwise complies with the obligations of an importer pursuant to § 57-3-301 and title 47, chapter 25, part 15.

(e) Every applicant which has registered to import wine into this state shall provide to the commission a verified statement that neither such applicant, nor any agent or affiliate of such applicant, has a policy which would permit the selling, shipment or distribution of alcoholic beverages to any person in this state not possessed of a license issued pursuant to § 57-3-203, and that, for the previous year, neither such applicant nor any agent or affiliate of such applicant has sold, solicited for sale or distributed any alcoholic beverages to any person or enterprise in this state not possessing a license issued pursuant to § 57-3-203.

History.
Acts 1981, ch. 157, § 5; 1991, ch. 23, § 1;
2004, ch. 876, § 4; 2011, ch. 448, § 3.

57-3-606. Wholesalers to import from nonresident seller permittees only.

No wholesaler licensed under § 57-3-203 may purchase or order any alcoholic beverage for importation into the state from any source other than one possessed of a nonresident seller's permit or a wholesaler licensed pursuant to § 57-3-203 holding a basic permit under the Federal Alcohol Administration Act (27 U.S.C. § 201 et seq.), as an importer. No such wholesaler may purchase or order any alcoholic beverage for importation into the state from any permittee whose permit has been revoked or suspended after such wholesaler has received notice of the revocation or suspension.

Notwithstanding § 57-1-201(b)(1)(A), no administrative action, including the imposition of any fine, may be brought against a wholesaler under this section unless, prior to bringing the action, the commission has provided written notice to the wholesaler advising the wholesaler that the supplier's nonresident seller's permit has been revoked, suspended, or not renewed.

History.
Acts 1981, ch. 157, § 6; 2011, ch. 448, § 2;
2016, ch. 898, § 3.

57-3-607. Nonresident seller to be primary American source of supply.

(a) No holder of a nonresident seller's permit may solicit, accept, or fill an order for distilled spirits or wine from a holder of any type of wholesaler's permit unless the nonresident seller is the primary American source of supply for the brand of distilled spirits or wine that is ordered.

(b) In this section, "primary American source of supply" means the distiller, the producer, the owner of the commodity at the time it becomes a marketable product, the bottler, or the exclusive agent of any of those. To be the "primary American source of supply" the nonresident seller must be the first source, that is, the manufacturer or the source closest to the manufacturer, in the channel of commerce from whom the product can be secured by American wholesalers.

History.
Acts 1981, ch. 157, § 7.

57-3-608. [Reserved.]

57-3-609. Investigation of permittees.

(a) If a representative of the commission or the department of revenue wishes to examine the books, accounts, records, minutes, letters, memoranda, documents, checks, telegrams, constitution and bylaws, or other records of a nonresident seller's permittee, the representative shall make a written request to the permittee or the permittee's duly authorized manager or representative or, if the permittee is a corporation, to any officer of the corporation.

(b) When a request for an examination is made, the person to whom it is directed shall immediately allow the representative to conduct the examination.

(c) The representative may investigate the organization, conduct, and management of any nonresident seller's permittee and may make copies of any records which in the judgment of the representative may show or tend to show that the permittee has violated state law, regulation or the terms of the permit.

(d) A representative may not make public any information obtained under this section except to a law enforcement officer of this state or in connection with an administrative or judicial proceeding in which the state or commission is a party concerning the cancellation or suspension of a nonresident seller's permit, the collection of taxes due under state law, or the violation of state law.

(e) The commission may revoke or suspend a nonresident seller's permit in accordance with this title if a permittee or the permittee's authorized representative fails or refuses to permit an examination authorized by this section,

or to permit the making of copies of any documents as provided by this section, without regard to whether the document is inside or outside the state, or if the permittee or the permittee's authorized representative fails or refuses to answer a question of an officer incident to an examination or investigation in progress.

History.
Acts 1981, ch. 157, § 9.

Attorney General Opinions.
A minor may be used to purchase beer as part of an investigation by a local beer board so long as written approval of the minor's parents and the juvenile court is obtained, OAG 01-062 (4/20/01).

PART 7

EMPLOYEE AND SERVER PERMITS

57-3-701. Short title.

This part shall be known as the "Alcohol Server Responsibility and Training Act of 1995."

History.
Acts 1995, ch. 396, § 1.

Compiler's Notes.
Acts 1995, ch. 396, § 9 provided that persons holding a valid employee or salesperson permit issued by the commission need not obtain a new permit hereunder until the expiration of the existing permits.

Law Reviews.
One Too Many: Sellers, Servers Must Know "How Much Is Too Much" to Avoid Alcohol Related Injuries (Mike Faulk), 43 Tenn. B.J. 12 (2007).

57-3-702. Commission authorized to issue permits.

The commission is authorized to issue employee permits pursuant to §§ 57-3-203(d), 57-3-203(e), [former] 57-3-204(c) and server permits pursuant to § 57-4-203(h) in accordance with the requirements of this part.

History.
Acts 1995, ch. 396, § 1; 2014, ch. 973, § 3; 2017, ch. 373, § 3.

Compiler's Notes.
Section 57-3-204(c), referred to in this section, expired effective July 1, 2016.

57-3-703. Application requirements for employee permit.

(a) Any individual may be eligible for an employee permit by completing an application for such a permit on the forms provided by the commission. An applicant for an employee permit must demonstrate to the commission that the applicant is at least eighteen (18) years of age and:

(1) Has not been convicted of a felony offense involving theft, dishonesty, deceit, or intoxication within the previous eight (8) years;

(2) Has not been convicted of any crime involving the sale or distribution of alcoholic beverages or beer, Schedules I and II controlled substances, or controlled substance analogues or any sex-related crime or embezzlement within the previous eight (8) years;

(3) Has not had an employee permit or any similar permit issued by the state, any local jurisdiction, or any foreign jurisdiction revoked by any

issuing authority within the previous five (5) years; and

(4) Has not had an ownership interest in any licensee or permittee, licensed or permitted pursuant to § 57-3-203, § 57-3-204, § 57-3-207, § 57-4-101 or § 57-5-103 which has had its license or permit revoked by the issuing authority within the previous eight (8) years.

(b) If an applicant does not meet the requirements of subdivisions (a)(1)-(4), but is otherwise eligible for a permit, then the applicant's application shall be initially denied pursuant to this subsection (b). Within thirty (30) days of such initial denial, the applicant may request a hearing to be held pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. At such hearing, the administrative law judge or hearing officer may consider any evidence the administrative law judge or hearing officer deems relevant to the matter and may, if in the administrative law judge's or hearing officer's judgment the principles of equity require, approve the application and grant the employee permit, notwithstanding the requirements of subdivisions (a)(1)-(4).

(c)(1) If an applicant does not request a hearing pursuant to subsection (b) within the required period, then the application's denial will be final and the applicant may not reapply for an employee permit until the relevant time period described in subdivisions (a)(1)-(4) has expired. If a person applies for an employee permit in violation of this subdivision (c)(1), then such application shall be denied and subsection (b) shall not apply.

(2) If the administrative law judge, hearing officer, or commission denies an application at a hearing held pursuant to subsection (b), then the application's denial will be final and the applicant may not reapply for an employee permit or apply for a server permit pursuant to § 57-3-704 until the relevant time period described in subdivision (a)(1)-(4) has expired. If a person applies for an employee or server permit in violation of this subdivision (c)(2), then such application shall be denied and subsection (b) or § 57-3-704(b) shall not apply.

(d) If a person is convicted of an offense described in subdivision (a)(1) or (a)(2) after being issued an employee permit pursuant to this section, the commission may institute proceedings to revoke the person's employee permit pursuant to § 57-3-214; provided, that the administrative law judge or hearing officer may, if in the administrative law judge's or hearing officer's judgment the principles of equity require, refuse to revoke the person's employee permit, notwithstanding a finding that the person has been convicted of an offense described in subdivision (a)(1) or (a)(2). If the administrative law judge, hearing officer, or commission revokes an employee permit pursuant to this subsection (d), then the applicant may not reapply for an employee permit or apply for a server permit pursuant to § 57-3-704 until the relevant time period described in subdivision (a)(1) or (a)(2) has expired. If a person applies for an employee or server permit in violation of this subsection (d), then such application shall be denied and subsection (b) or § 57-3-704(b) shall not apply.

(e) The commission may promulgate rules and regulations to enforce and administer this section pursuant to the Uniform Administrative Procedures Act.

History.
Acts 1995, ch. 396, § 1; 2014, ch. 973, § 1; 2016, ch. 719, § 1; 2017, ch. 147, § 12.

Complier's Notes.
Acts 2016, ch. 719, § 11 provided that the act, which amended this section, shall take effect on April 6, 2016 and shall apply to actions instituted by state entities on or after April 6, 2016.

57-3-704. Application requirements for server permits.

(a) Any individual may be eligible for a server permit by completing an application for such a permit on the forms provided by the commission. An applicant for a server permit must demonstrate to the commission that the applicant meets the following requirements:

(1) Within one (1) year prior to the submission of the application the applicant has successfully completed a program of alcohol awareness training for persons involved in the direct service of alcohol, wine or beer by an entity certified by the commission to have an adequate training curriculum for alcohol awareness. If, in the determination of the commission, a state other than Tennessee is deemed to have an adequate program of alcohol awareness training, then the successful completion of such training in that state within one (1) year prior to the submission of an application to the commission for a server permit shall satisfy the requirement of alcohol awareness training;

(2) The applicant is at least eighteen (18) years of age; and

(3) The applicant:

(A) Has not been convicted of a felony offense involving theft, dishonesty, deceit, or intoxication within the previous eight (8) years;

(B) Has not been convicted of any crime relating to the sale or dispensing of alcoholic beverages or beer, Schedules I and II controlled substances, or controlled substance analogues or any sex-related crime or embezzlement within the previous eight (8) years;

(C) Has not had a server permit or any similar permit issued by the state, any local jurisdiction, or any foreign jurisdiction revoked by any issuing authority within the previous five (5) years; and

(D) Has not had an ownership interest in any licensee or permittee, licensed or permitted pursuant to § 57-3-203, § 57-3-204, § 57-3-207, § 57-4-101 or § 57-5-103 which has had its license or permit revoked by the issuing authority within the previous eight (8) years.

(b) If an applicant does not meet the requirements of subdivision (a)(3), but is otherwise eligible for a server permit, then the applicant's application shall be initially denied pursuant to this subsection (b). Within thirty (30) days of such initial denial, the applicant may request a hearing to be held pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. At such hearing, the administrative law judge or hearing officer may consider any evidence the administrative law judge or hearing officer deems relevant to the matter and may, if in the administrative law judge's or hearing officer's judgment the principles of equity require, approve the application and grant the employee permit, notwithstanding the requirements of subdivision (a)(3).

(c)(1) If an applicant does not request a hearing pursuant to subsection (b) within the required period, then the application's denial will be final and the

applicant may not reapply for a server permit until the relevant time period described in subdivision (a)(3) has expired. If a person applies for a server permit in violation of this subdivision (c)(1), then such application shall be denied and subsection (b) shall not apply.

(2) If the administrative law judge, hearing officer, or commission denies an application pursuant to subsection (b), then the application's denial will be final and the applicant may not reapply for a server permit or apply for an employee permit pursuant to § 57-3-703 until the relevant time period described in subdivision (a)(3) has expired. If a person applies for an employee or server permit in violation of this subdivision (c)(2), then such application shall be denied and subsection (b) or § 57-3-703(b) shall not apply.

(d) If a person is convicted of an offense described in subdivision (a)(3)(A) or (a)(3)(B) after being issued a server permit pursuant to this section, the commission may institute proceedings to revoke the person's server permit pursuant to § 57-3-214; provided, that the administrative law judge or hearing officer may, if in the administrative law judge's or hearing officer's judgment the principles of equity require, refuse to revoke the person's server permit, notwithstanding a finding that the person has been convicted of an offense described in subdivision (a)(3)(A) or (a)(3)(B). If the administrative law judge, hearing officer, or commission revokes a server permit pursuant to this subsection (d), then the applicant may not reapply for a server permit or apply for an employee permit pursuant to § 57-3-703 until the relevant time period described in subdivision (a)(3)(A) or (a)(3)(B) has expired. If a person applies for an employee or server permit in violation of this subsection (d), then such application shall be denied and subsection (b) or § 57-3-703(b) shall not apply.

(e) The commission may promulgate rules and regulations to enforce and administer this section pursuant to the Uniform Administrative Procedures Act.

(f) The commission may suspend or revoke a server permit for any violation of this title or any rule or regulation promulgated by the commission committed by the permit holder. The commission may, in lieu of suspending or revoking a server permit under this subsection (f), require the server to retake and successfully complete a program of alcohol awareness training conducted by an entity certified by the commission.

(g)(1) Any employee, representative, or agent of a permittee whose duties include verifying that a person is twenty-one (21) years of age or older for the purpose of authorizing the person access to the premises of the permittee shall, during any period in which the employee, representative, or agent is required to verify that a person is twenty-one (21) years of age or older, require each person seeking access to the premises whose physical appearance does not reasonably demonstrate an age of fifty (50) years or older to present a valid, government-issued document or other acceptable form of identification that includes the photograph and birth date of the person.

(2) The commission may impose a fine of five hundred dollars ($500) against any employee, representative, or agent of a permittee who violates subdivision (g)(1).

(3) As used in this subsection (g):

(A) "Employee, representative, or agent" does not include a server permitted under § 57-4-203(h) and this part; and

(B) "Permittee" means any person, business, or other entity issued a permit under chapter 4 of this title for the purpose of authorizing the sale and consumption of alcoholic beverages on the premises of the permittee.

History.
Acts 1995, ch. 396, § 1; 2001, ch. 279, § 2; 2012, ch. 848, § 60; 2012, ch. 1063, § 2; 2014, ch. 973, § 2; 2016, ch. 719, § 2; 2016, ch. 908, § 2; 2017, ch. 147, § 13.

Compiler's Notes.
Acts 2016, ch. 719, § 11 provided that the act, which amended this section, shall take effect on April 6, 2016, and shall apply to actions instituted by state entities on or after April 6, 2016.

Attorney General Opinions.
Neither this section nor the statute authorizing the Alcoholic Beverage Commission to promulgate rules, T.C.A. § 57-3-710, authorizes the commission to promulgate a rule that would allow it to grant a server permit and immediately suspend it for a specific length of time, OAG 04-021 (2/09/04).

57-3-705. Commission certification.

The commission shall certify any organization or entity seeking to provide alcohol awareness training for employees or servers, or both, upon adequate demonstration to the commission that the curriculum, faculty, materials and facilities of the organization or entity meet such minimum standards as shall be fixed by the commission. The commission is authorized to review the adequacy of the curriculum, faculty, materials and facilities of any certified trainer at any time. Failure of any certified trainer to maintain adequate records, respond to a request for information from the commission, or meet the minimum standards prescribed by the commission shall be grounds to decertify the organization or entity. The commission may certify any online training programs that meet the minimum standards as set by the commission.

History.
Acts 1995, ch. 396, § 1; 2017, ch. 338, § 3.

57-3-706. Criminal record check.

The commission may conduct a criminal record review of any applicant for an employee or server permit to ensure the applicant's compliance with the requirements of this part. The commission shall employ the best available means to conduct this investigation.

History.
Acts 1995, ch. 396, § 1.

57-3-707. Temporary permits — Replacement permit cards — Property of employee.

A new server may work for sixty-one (61) days after being hired without the permit required by this part. Any server who has worked for sixty-one (61) days must have the permit required by this part. Upon payment of a reasonable copying fee, the alcoholic beverage commission is authorized and directed to issue replacement permit cards to any cardholder who is qualified under this

part for an employee or server permit card which is still valid. Employee and server permit cards are hereby declared the property of the employee or server to whom such cards have been issued. Licensed establishments shall only require a server or employee to provide a copy of such cards for keeping by the establishment.

History.
Acts 1995, ch. 396, § 1; 1999, ch. 206, § 1; 2001, ch. 279, § 1; 2002, ch. 716, § 1.

57-3-708. Permit renewal.

Each employee and server permit shall be valid for five (5) years. Applications for renewal shall be made in the same manner as applications for original permits upon forms prescribed by the commission. Employee and server permits are not transferrable.

History.
Acts 1995, ch. 396, § 1; 2001, ch. 279, § 3.

57-3-709. Fees.

The commission may assess an application and renewal fee for the permits to be issued under this part. The commission may assess a certification fee to any organization or entity seeking certification under § 57-3-705. The commission shall establish such fees, only pursuant to rules promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and such fees shall be limited only to covering the costs of implementing this part and for the implementation and updating of commission information technology and software. The commission shall assess an application and renewal fee for the permits issued under this part in an amount sufficient to fund any cost to the state which results from loss of federal funds to implement and administer this program.

History.
Acts 1995, ch. 396, § 1; 2015, ch. 425, § 2.

57-3-710. Implementation.

The commission is authorized to promulgate appropriate rules to implement this part.

History.
Acts 1995, ch. 396, § 1.

Attorney General Opinions.
Neither this section nor the statute governing server issuance and denial of server permits, T.C.A. § 57-3-704, authorizes the Alcoholic Beverage Commission to promulgate a rule that would allow the commission to grant a server permit and immediately suspend it for a specific length of time, OAG 04-021 (2/09/04).

PART 8

SALE OF WINE IN RETAIL FOOD STORES

57-3-801. Referendum for sale of wine in retail food stores — Form of referendum — Time of election.

(a)(1) This part shall be effective in any jurisdiction that authorizes the sale of wine in retail food stores in a referendum in the manner prescribed by § 57-3-106; provided, however, that a jurisdiction must have held and passed a referendum authorizing retail package stores or held and passed a referendum authorizing the sale of alcoholic beverages for consumption on the premises prior to holding a referendum authorized under this section.

(2) If the county election commission receives the necessary petition requesting the referendum not less than forty-five (45) days before the date on which an election is scheduled to be held, except for referenda scheduled to be held with the regular November general election which shall be held pursuant to § 2-3-204, the county election commission shall include the referendum question contained in subsection (b) on the ballot.

(3) Notwithstanding subdivision (a)(1) and § 57-3-101(a)(14) to the contrary, any municipality having a population of not less than five hundred seventy (570) nor more than five hundred seventy-nine (579), according to the 2010 federal census or any subsequent federal census, that is located in any county having a population of not less than twenty-nine thousand four hundred (29,400) nor more than twenty-nine thousand five hundred (29,500), according to the 2010 federal census or any subsequent federal census, may conduct a referendum to authorize the sale of wine at retail food stores within the corporate boundaries of such municipality. The referendum shall be conducted in the manner prescribed by § 57-3-106, notwithstanding the population requirements of § 57-3-106(b)(1).

(b) At any such election, the question submitted to the voters shall be in the following form:

For legal sale of wine at retail food stores in _____ (here insert name of political subdivision).

Against legal sale of wine at retail food stores in _____(here insert name of political subdivision).

(c) A referendum described in this section may be held at any election prescribed in § 57-3-106(c)(1); provided, however, that no such referendum may be held prior to the regular November election in 2014.

History.
Acts 2014, ch. 554, § 1; 2016, ch. 1068, § 7.

Compiler's Notes.
For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

57-3-802. Part definitions.

For purposes of this part:

(1) "Retail food store" means an establishment that is open to the public that derives at least twenty percent (20%) of its sales taxable sales from the

retail sale of food and food ingredients for human consumption taxed at the rate provided in § 67-6-228(a) and has retail floor space of at least one thousand two hundred square feet (1,200 sq. ft.); and

(2)(A) "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed eighteen percent (18%) by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which the same was predominantly produced, or an artificial or imitation wine.

(B) "Wine" does not mean alcohol derived from wine that has had substantial changes to the wine due to the addition of flavorings and additives.

History.
Acts 2014, ch. 554, § 1.

57-3-803. Retail food store wine licenses.

(a) Notwithstanding any other law to the contrary, an additional class of licenses allowing the sale of wine at retail food stores is created. These licenses shall be known as "retail food store wine licenses" and shall be issued by the alcoholic beverage commission; provided, that licenses shall only be issued to a retail food store located in a county or municipality that has authorized the sale of wine at retail food stores by local option election pursuant to § 57-3-801 and has full-time law enforcement through a police or sheriff's department. The commission shall begin issuing the retail food store wine licenses on July 1, 2016, and prior to that date no retail food store may sell wine; however, the commission shall accept applications from retail food stores in jurisdictions that have authorized the sale of wine at retail food stores and begin processing such applications prior to that date. The retail food store wine license shall permit the licensee to receive, store, possess and sell wine at retail for consumption off the premises at the licensed retail food store subject to the restrictions in this part.

(b)(1) Any person, partnership, limited liability company or corporation desiring to sell wine to patrons or customers within the premises of a retail food store, in sealed packages only, and not for consumption on the premises shall make application to the commission for a retail food store wine license, which application shall be in writing and verified, on forms herein authorized to be prescribed and furnished; and the commission may, subject to the restrictions of this part, issue such retailer's license. A retail food store may enter into a franchise or management agreement with a person or entity to make wine sales at the premises of the retail food store. If the premises with respect to which the license is sought is owned by a person, partnership, limited liability company or corporation not the applicant, the application shall include the name and address of the owner. If the ownership of the premises should change after a license is granted, the licensee shall, within ten (10) days after becoming aware of such change in ownership, notify the commission in writing of the name and address of the new owner.

(2)(A) Any individual applicant applying for a retail food store wine license must be twenty-one (21) years of age or older and must not have been convicted of a felony subject to § 57-3-210(c).

(B) The commission may issue a retail food store wine license to a person, partnership, limited liability company or corporation that is registered to do business in this state regardless of the residence of the ownership of such entity. No holder of a retail food store wine license, nor any person or entity having any interest in such license greater than ten percent (10%) shall have any interest as partner or otherwise, either direct or indirect, in a business licensed to engage in the sale or distribution of alcoholic beverages, including wine and beer licensed under § 57-3-202, § 57-3-203, § 57-3-204, § 57-3-207, § 57-3-217 or part 6 of this chapter. Nothing shall prohibit the holder of a retail food store wine license from having more than one (1) retail food store wine license. Nothing in this subdivision (b)(2)(B) shall be construed as prohibiting a retail food store that owns its own premises from either holding a retail food store wine license or from entering into a franchise or management agreement as provided in subdivision (b)(1).

(c) Any wine sold by the holder of a retail food store wine license shall not exceed an alcoholic content of eighteen percent (18%) by volume.

(d) Nothing in this part is intended or shall be construed to modify the provisions of title 57 that provide for the separation and independence of the classes of licenses available to manufacturers, wholesalers or retailers of alcoholic beverages or beer in this state.

History.
Acts 2014, ch. 554, § 1; 2016, ch. 787, § 1.

57-3-804. Application fee and annual license fee.

Each applicant for a retail food store wine license shall pay to the commission a one-time, nonrefundable fee in the amount of four hundred dollars ($400) when the application is submitted for review. A retail food store wine license under this section shall not be issued until the applicant shall have paid to the commission the annual license fee of one thousand two hundred fifty dollars ($1,250).

History.
Acts 2014, ch. 554, § 1.

57-3-805. Location of licensed premises.

The premises of a retail food store wine license may be located in a municipality or the unincorporated areas of a county; provided, that such county or municipality has approved sales of wine by retail food stores by local option election pursuant to § 57-3-801. If a county-wide referendum is approved under this part, the premises of a retail food store wine license may be located in any municipality that participated in the referendum regardless of the minimum population requirement for a municipality in § 57-3-101.

History.
Acts 2014, ch. 554, § 1; 2017, ch. 147, § 19.

57-3-806. Certificate to accompany application for license — Contents — Requirements for renewal of license — Limitation on location of licensed premises — Review of denial of certificate.

(a) As a condition precedent to the issuance of a license under § 57-3-803, every applicant for a license under that section shall submit with the application to the commission a certificate signed by the county mayor or chair of the county commission in which the licensed premises are to be located if outside the corporate limits of a municipality or, if within a municipality, from the mayor or a majority of the commission, city council, or legislative body of the municipality, by whatsoever name designated, or if the municipality has no mayor, from the highest executive of the municipality. The issuance of a certificate shall not be conditioned on the residency of the applicant, including, but not limited to, requiring the applicant to live within the county or municipality, or additional conditions not required by this section.

(b)(1) The certificate must state:

(A) That the applicant or applicants who are to be in actual charge of the business have not been convicted of a felony within a ten-year period immediately preceding the date of application and, if a corporation, that the executive officers or those in control have not been convicted of a felony within a ten-year period immediately preceding the date of the application; and

(B) That the applicant or applicants have secured a location for the business which complies with all zoning laws adopted by the local jurisdiction, as to the location of the business.

(2) Each applicant or officer identified in subdivision (b)(1)(A) must obtain and submit with the certificate a local and national criminal history record obtained from a third party using a multistate criminal records locator or other similar commercial nationwide database with validation. A criminal history record that indicates that the applicant or officer has not been convicted of a felony within the immediately preceding ten-year period serves as proof satisfactory that the applicant or officer has complied with subdivision (b)(1)(A).

(c) Municipalities and counties are not authorized to limit the number of retail food store wine licenses issued within their jurisdictions.

(d)(1) In order to renew a retail food store wine license, the licensee must maintain a minimum of twenty percent (20%) of the licensee's sales taxable sales from the retail sale of food and food ingredients for human consumption taxed at the rate provided in § 67-6-228(a), such percentage to be calculated on an annual basis. The licensee shall keep sales and purchase records through accounting methods that are customary or reasonable in the retail food store business.

(2) A retail food store wine licensee who fails to comply with subdivision (d)(1) in achieving the minimum required sales or in failing to keep adequate records shall have one (1) year to come into compliance. During this one-year period, the licensee shall work with the commission in creating a plan that

would bring the licensee into compliance with this subsection (d).

(3) Failure to comply after the one-year period shall result in the retail food store wine license being suspended or revoked by the commission.

(4) In order to determine compliance with subdivision (d)(1), each retail licensee shall submit sales information to the commission in such form as the commission deems appropriate at the time the licensee applies for a license or upon renewal of such license. Each licensee shall provide the licensee's sales tax registration number to the commission. The commission is authorized to verify sales information if the commission deems it necessary with the department of revenue.

(e)(1) No retail food store wine license shall be issued to a retail food store located within a shopping center or other development unless documentation is provided to the commission that the retail food store has:

(A) Not prohibited or restricted, through its lease or other agreement with the owner of the shopping center or development, the sale of wine or other alcoholic products by others at the shopping center or development; or

(B) Waived any prohibition or restriction on the sale of wine or other alcoholic products, if such prohibition or restriction is in the lease.

(2) If an applicant for a retail food store wine license is the owner of the shopping center or development, the applicant shall waive any prohibition or restriction on the sale of wine or other alcoholic products on any other entity that is located within that shopping center or development owned by the applicant. Nothing in this subsection (e) shall prevent the nonapplicant owner of a shopping center from imposing restrictions on its tenants through its leases or agreements.

(f) An applicant may seek review of the denial of a certificate by instituting an action in the chancery court having jurisdiction over the municipality or county within sixty (60) days of the denial.

(g) A failure on the part of the issuing authority to grant or deny the certificate within sixty (60) days of the written application for such shall be deemed a granting of the certificate.

(h) The requirement imposed by this section to submit a certificate shall not be applicable to any applicant if:

(1) The authority of the county or municipality charged with the responsibility to issue the certificate required herein shall have failed to grant or deny the certificate within sixty (60) days after written application for such certificate is filed; or

(2) The applicant submits a final order of a court holding that the denial of the required certificate was unreasonable, as established by subsection (f).

History.

Acts 2014, ch. 554, § 1; 2016, ch. 697, § 1; 2016, ch. 1068, § 6; 2017, ch. 357, § 2.

Compiler's Notes.

Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

57-3-807. Applicability of part 2 of this chapter to retail food store wine licenses.

Laws applicable to the issuance, renewal, suspension, and termination of retailer's licenses issued pursuant to part 2 of this chapter and the regulation of and operation by such license holders shall apply in the same manner to retail food store wine licenses and license holders unless this part expressly states otherwise.

History.
Acts 2014, ch. 554, § 1.

57-3-808. Prohibition against sales to minors — Identification required — Penalty.

(a) A retail food store wine license holder engaging in the business regulated under this part, or any employee thereof, shall not make or permit to be made any sales to minors. Prior to making a sale of wine for off-premises consumption, the adult consumer must present to the license holder or any employee of the license holder a valid, government-issued document, such as a driver license or other form of identification deemed acceptable to the license holder that includes the photograph and birth date of the adult consumer attempting to make a wine purchase. Persons exempt under state law from the requirement of having a photo identification shall present identification that is acceptable to the license holder. The license holder or employee shall make a determination from the information presented whether the purchaser is an adult. In addition to the prohibition of making a sale to a minor, no sale of wine for off-premises consumption shall be made to a person who does not present such a document or other form of identification to the license holder or any employee of the license holder in a face-to-face transaction; however, it is an exception to any criminal punishment or adverse administrative action, including license suspension or revocation, for a violation of this section if the sale was made to a person who is or reasonably appears to be over fifty (50) years of age and who failed to present an acceptable form of identification.

(b) A violation of subsection (a) is a Class A misdemeanor.

History.
Acts 2014, ch. 554, § 1; 2015, ch. 428, § 5.

Cross-References.
Penalty for Class A misdemeanor, § 40-35-111.

57-3-809. Prohibition against sale to intoxicated persons or persons accompanied by an intoxicated person.

No retail food store wine licensee shall sell any alcoholic beverages to any person who is visibly intoxicated, nor shall any retailer selling alcoholic beverages sell to any person accompanied by a person who is visibly intoxicated.

History.
Acts 2014, ch. 554, § 1.

57-3-810. Licensees exempt from certain restrictions — Licensee operating more than one licensed retail food store in state.

(a) The restrictions in §§ 57-3-404(e) and (f), 57-3-210(g) and (h) and 57-3-204(b) shall not apply to retail food store wine licenses issued pursuant to this part.

(b) A retail food store licensed to sell wine under this part shall not be limited to operating one (1) licensed retail food store business in this state; provided, however, that no retail food store wine licensee shall be permitted to combine its purchasing with any other retail food store wine licensee or retailer licensed under § 57-3-204.

History.
Acts 2014, ch. 554, § 1.

57-3-811. Hours for selling or giving away wine. [Effective until January 1, 2019. See the version effective on January 1, 2019.]

No retail food store shall sell, give away, or otherwise dispense wine except between the hours of eight o'clock a.m. (8:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Monday through Saturday.

History.
Acts 2014, ch. 554, § 1; 2018, ch. 783, § 3.

Amendments.
The 2018 amendment rewrote the section which read, "A retail food store licensed to sell wine under this part shall only sell, or give away, wine during the same hours a licensed retailer sells or gives away wine pursuant to § 57-3-406(e) and (h)."

Effective Dates.
Acts 2018, ch. 783, § 14. April 20, 2018.

57-3-811. Hours for selling or giving away wine. [Effective on January 1, 2019. See the version effective until January 1, 2019.]

No retail food store shall sell, give away, or otherwise dispense wine except between the hours of eight o'clock a.m. (8:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Monday through Saturday and between ten o'clock a.m. (10:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Sunday.

History.
Acts 2014, ch. 554, § 1; 2018, ch. 783, §§ 3, 4; 2018, ch. 783, §§ 3, 4.

Amendments.
The 2018 amendment by ch. 783, effective April 20, 2018, rewrote the section which read, "A retail food store licensed to sell wine under this part shall only sell, or give away, wine during the same hours a licensed retailer sells or gives away wine pursuant to § 57-3-406(e) and (h)."; and, effective January 1, 2019, added "and between ten o'clock a.m. (10:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Sunday" to the end of the section.

Effective Dates.
Acts 2018, ch. 783, § 14. April 20, 2018, January 1, 2019.

57-3-812. Storage and delivery of wine — Purchase of wine from wholesaler.

(a) A retail food store licensed to sell wine under this part shall not store any wine off of the licensed premises.

(b) All deliveries of wine to a retail food store must be made by a licensed wholesaler through a common carrier, a contract carrier or on vehicles owned

by the wholesaler. The deliveries shall only be made to the business address of the retail food store.

(c) All purchases of wine from a licensed wholesaler by a retail food store must be conducted by designated managers on premises at each retail food store location where delivery will be made. A retail food store may have more than one (1) designated manager per location.

(d) A wholesaler shall not take orders for wine from any retail food store employee other than a designated manager; provided, that an order does not include a preorder made by a person with a pending application for a retail food store wine license.

History.
Acts 2014, ch. 554, § 1; 2017, ch. 443, § 3.

57-3-813. Prohibition against credit sales to licensee by wholesaler.

No wholesaler shall sell any product to a retail food store wine licensee on credit and payment for all sales to such licensee by a wholesaler shall be effected upon delivery of the product. In order to facilitate the implementation of this section, all payments to wholesalers by such licensees shall be made by electronic funds transfer, credit card, debit card, or such other method as approved by the commission that will facilitate full payment at or near the time of delivery.

History.
Acts 2014, ch. 554, § 1; 2014, ch. 1015, § 7.

Attorney General Opinions.
Senate Bill 2415/House Bill 2027 of the 108th General Assembly (enacted as Public Chapter 1015), which requires liquor-by-the-drink licensees to make payment to wholesalers upon delivery of the product, does not violate equal protection under the United States or Tennessee Constitutions. OAG 14-61, 2014 Tenn. AG Lexis 63 (6/17/14).

Licensed wholesalers of alcoholic beverages may extend up to 10 days' credit to licensed retailers other than retail food store wine licensees. OAG 16-18, 2016 Tenn. AG LEXIS 17 (5/9/2016).

57-3-814. Licensee prohibited from sale of wine in connection with wholesale wine or alcoholic beverage business in state.

No holder of a retail food store wine license shall sell wine in connection with any business involved in the wholesale sale of wine or alcoholic beverages within this state.

History.
Acts 2014, ch. 554, § 1.

57-3-815. Wholesaler, manufacturer, winery, or nonresident seller's permit holder prohibited from providing certain services to licensee — Delivery of wine — Merchandising assistance.

(a) No wholesaler licensed under § 57-3-203 and no manufacturer, winery, nonresident seller's permit holder or any employee, agent, representative or salesperson employed by or representing any such wholesaler, manufacturer, winery or nonresident seller's permit holder shall provide any services to or for the benefit of a retail food store wine licensee including, but not limited to,

services involving shelving, dressing, displaying, or setting inventory owned or purchased by the retail food store licensee. A wholesaler may deliver wine to the premises of a retail food store wine licensee any time at which the wholesaler and the retail food store wine licensee's manager mutually agree in accordance with the ordinary and customary practices of the two industries, regardless of whether the retail food store wine licensee is open to the public, and may deliver wine to a location upon the licensed premises as directed by the retail food store wine licensee.

(b) Notwithstanding subsection (a), a wholesaler, including the wholesaler's agents, servants, or employees, may provide merchandising assistance to a retail food store wine licensee pursuant to this subsection (b). Wholesalers may build and stock wholesaler displays of wine on the premises of a retail food store wine licensee. Wholesaler displays must not be part of the retail food store's regular shelving. Wholesalers may replenish wholesaler displays for a maximum period of one (1) month after the initial display has been installed. Wholesalers shall not price the wholesaler displays and shall not provide any other services or things of value to the retail food store wine licensee.

History.
Acts 2014, ch. 554, § 1; 2017, ch. 443, §§ 1, 2.

57-3-816. Permitted manager — Employees to obtain certification pursuant to responsible vendor training program for wine.

(a) Any retail food store that is licensed to sell wine must have a permitted manager as prescribed in § 57-3-221 and that manager must work on the premises of the licensed retail food store. A retail food store may have more than one (1) manager per license.

(b) All employees of a retail food store that is licensed to sell wine and is involved in selling the wine must obtain certification pursuant to the responsible vendor training program for wine in § 57-3-818.

History.
Acts 2014, ch. 554, § 1.

57-3-817. Wine tastings prohibited on premises — Licensee permitted to hold license to sell alcoholic beverages for consumption on premises — Requirements.

(a) No retail food store shall conduct tastings of wine on the premises of the retail food store.

(b) A retail food store that has a license pursuant to this part may also hold a license to sell alcoholic beverages for consumption on premises pursuant to chapter 4 of this title.

History.
Acts 2014, ch. 554, § 1; 2016, ch. 830, § 1.

57-3-818. Responsible vendor training program — Fees — Exceptions.

(a) The commission shall create a responsible vendor training program for

retail food store wine licensees and retailers licensed pursuant to § 57-3-204 similar to the responsible vendor training program established in chapter 5, part 6 of this title.

(b) Except as provided in subsection (d), each retail food store wine licensee and retailer licensed in this state shall participate in the responsible vendor training program created under this section as a condition to having and maintaining such license.

(c) Each retail food store wine licensee and retailer shall pay an annual fee based on the number of certified clerks existing at the time the licensee applies to the commission for certification under the responsible vendor training program. The fee shall be as follows:

(1) 0-15 certified clerks—$150;
(2) 16-30 certified clerks—$200;
(3) 31-45 certified clerks—$250;
(4) 46-60 certified clerks—$300;
(5) 61-100 certified clerks—$350;
(6) 101-150 certified clerks—$400;
(7) 151-200 certified clerks—$450; and
(8) $50.00 for each additional 50 certified clerks over 200.

(d) The commission shall not require any licensee to participate or pay fees for both the responsible vendor training program created in this section and the program established in chapter 5, part 6 of this title. Participation in either program shall be deemed sufficient compliance.

(e) This section shall not apply to employees of a retailer licensed under § 57-3-204 until July 1, 2016. Any employee of a retailer who has a valid permit under [former] § 57-3-204(c) on July 1, 2016, shall not be required to be certified pursuant to this section until that permit expires.

History.
Acts 2014, ch. 554, § 1.

Compiler's Notes.
Section 57-3-204(c), referred to in this section, expired effective July 1, 2016.

57-3-819. Prohibition against sale or gift of wine on certain holidays.

Notwithstanding any law to the contrary, a retail food store wine licensee shall not sell or give away wine on Christmas, Thanksgiving, or Easter.

History.
Acts 2018, ch. 1010, § 3.

Effective Dates.
Acts 2018, ch. 1010, § 4. May 21, 2018.

PART 9

UNFAIR WINE SALES LAW

57-3-901. Short title.

This part shall be known and may be cited as the "Unfair Wine Sales Law."

History.
Acts 2014, ch. 554, § 30.

57-3-902. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Basic cost of wine" means the invoice cost of wine to the retailer in the quantity last purchased from the wholesaler at prices generally available in the marketplace, absent any cash or other discounts, incentives and/or concessions of any kind, whether such discounts, incentives or concessions are offered within or outside of this state, to which shall be added the full face value of any taxes, freight or delivery fees which may be required by any tax law of this state imposed upon wine supplied to retailers now in effect or hereafter enacted, and any other taxes or fees imposed by this title, if not already included by the wholesaler in this price;

(2) "Commission" means the alcoholic beverage commission;

(3) "Cost of doing business by the retailer" is twenty percent (20%) of the basic cost of wine to the retailer;

(4) "Cost to the retailer" means the "basic cost of wine" to the retailer plus the "cost of doing business by the retailer"; and

(5) "Prices generally available in the marketplace" shall mean the price of wine based upon a purchase from a wholesaler on terms and conditions:

(A) Typically available to nonfood store retailers in the trade area in which the retailer is located; and

(B) In accordance with the requirements set forth in §§ 57-3-811, 57-3-812 and 57-3-813;

(6) "Retailer" shall mean the holder of a retail food store wine license issued under § 57-3-803 or the holder of a retailer license under § 57-3-204;

(7) "Sell at retail," "sales at retail" or "retail sales" means and includes any transfer of title to tangible personal property for a valuable consideration made in the ordinary course of trade or usual prosecution of the seller's business, to the purchaser for consumption or use; and

(8) "Wholesaler" has the same meaning as provided in § 57-3-101(a).

History.
Acts 2014, ch. 554, § 30.

57-3-903. Advertising, offering for sale or selling wine at less than cost — Misdemeanor — Prima facie violation of part.

(a) It is a Class C misdemeanor for any retailer to advertise, offer to sell, or sell at retail, wine at less than cost to the retailer.

(b) The advertising, sale or offer to sell of wine by any retailer at less than cost to the retailer shall be prima facie evidence of both a violation of this part, and of intent to injure competitors or destroy substantially or lessen competition.

History.
Acts 2014, ch. 554, § 30.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

57-3-904. Assisting or aiding violation of part — Penalty.

Any individual who, as a director, officer, partner, member, or agent of any person violating this part, assists or aids, directly or indirectly, in such violation, equally with the person for whom such individual acts, commits a Class C misdemeanor.

History.
Acts 2014, ch. 554, § 30.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

57-3-905. Contracts in violation of part illegal and void.

Any contract, express or implied, made by any person, firm, or corporation in violation of any of the provisions of this part is declared to be an illegal and void contract and no recovery thereon shall be had.

History.
Acts 2014, ch. 554, § 30.

57-3-906. Equitable action to enjoin violation — Recovery of damages and costs — Action for damages alone permitted.

(a)(1) Any person or entity injured by any violation of this part, or any trade association which is representative of such a person or entity, may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin such violation.

(2) If, in such action, a violation of this part shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit.

(3) In such action, it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in the action, in addition to such injunctive relief and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this part may maintain an action for damages alone in any court of general jurisdiction, and the measure of damages in such action shall be the same as prescribed in subsection (a).

History.
Acts 2014, ch. 554, § 30.

57-3-907. Restrictions on sales by retail food stores.

No retail food store as defined in § 57-3-802 shall sell, offer for sale or advertise the sale of:

(1) Two (2) or more items, at least one (1) of which items is wine, at a combined price; or

(2) Liquor, spirits or high alcohol content beer.

History.
Acts 2014, ch. 554, § 30.

57-3-908. Commission to enforce part — Civil penalties — Petition for hearing.

(a) The commission shall administer and enforce this part.

(b)(1) For an initial violation or noncompliance with any provision of this part by a retailer, a penalty shall be imposed not to exceed one thousand dollars ($1,000);

(2) For any second violation or noncompliance with any provision of this part by any retailer who has previously been found in violation pursuant to subdivision (b)(1), a penalty shall be imposed not to exceed two thousand five hundred dollars ($2,500); and

(3) For any subsequent violation or violations or noncompliance with any provision of this part, by any retailer who has previously been found in violation pursuant to subdivision (b)(2), a penalty shall be imposed not to exceed five thousand dollars ($5,000).

(c) Any retailer who is assessed a civil penalty pursuant to this section, and who continues to engage in the unauthorized sale, distribution or handling of wine in this state, either directly or through any agent or third party acting on behalf of such retailer, shall be charged with an additional violation of this part.

(d) Any retailer who is adversely affected by a decision of the commission may petition the commission for a hearing which will be held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(e) In enforcing this part, the commission shall consider the cost and effectiveness of administration and endeavor to administer this part in the most cost-efficient manner.

History.
Acts 2014, ch. 554, § 30.

57-3-909. Exceptions from application of part.

This part shall not apply to sales at retail made where wines are:

(1) Sold upon the complete final liquidation of a business;

(2) Advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court;

(3) Closeouts and case discounts; or

(4) Such other occasional discounts as defined by the commission.

History.
Acts 2014, ch. 554, § 30.

PART 10

INTOXICATING LIQUOR SALES LAW

57-3-1001. Short title.

This part shall be known and may be cited as the "Intoxicating Liquor Sales Law."

History.
Acts 2018, ch. 783, § 6.

Effective Dates.
Acts 2018, ch. 783, § 14. April 20, 2018.

57-3-1002. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Basic cost of intoxicating liquor" means the invoice cost of intoxicating liquor to the retailer in the quantity last purchased from the wholesaler at prices generally available in the marketplace, absent any cash or other discounts, incentives and/or concessions of any kind, whether such discounts, incentives, or concessions are offered within or outside of this state, to which shall be added the full face value of any taxes, freight, or delivery fees which may be required by any tax law of this state imposed upon intoxicating liquor supplied to retailers now in effect or hereafter enacted, and any other taxes or fees imposed by this title, if not already included by the wholesaler in this price;

(2) "Commission" means the alcoholic beverage commission;

(3) "Cost of doing business by the retailer" is ten percent (10%) of the basic cost of intoxicating liquor to the retailer;

(4) "Cost to the retailer" means the "basic cost of intoxicating liquor" to the retailer plus the "cost of doing business by the retailer";

(5) "Intoxicating liquor" means and includes alcohol, spirits, liquors, and every liquid or solid, patented or not, containing alcohol, spirits, liquor, or wine and capable of being consumed by human beings, but nothing in this part shall be construed or defined as including or relating to the sale of any beverage having an alcoholic content of eight percent (8%) by weight or less;

(6) "Prices generally available in the marketplace" means the price of intoxicating liquor based upon a purchase from a wholesaler on terms and conditions:

(A) Typically available to retailers in the trade area in which the retailer is located; and

(B) In accordance with the requirements set forth in § 57-3-404;

(7) "Retailer" means the holder of a retailer license under § 57-3-204;

(8) "Sell at retail", "sales at retail", or "retail sales" means and includes any transfer of title to tangible personal property for a valuable consideration made in the ordinary course of trade or usual prosecution of the seller's business, to the purchaser for consumption or use; and

(9) "Wholesaler" has the same meaning as provided in § 57-3-101(a).

History.
Acts 2018, ch. 783, § 6.

Effective Dates.
Acts 2018, ch. 783, § 14. April 20, 2018.

57-3-1003. Violations — Penalty.

(a) It is a Class C misdemeanor for any retailer to advertise, offer to sell, or sell at retail, intoxicating liquor at less than cost to the retailer.

(b) The advertising, sale, or offer to sell of intoxicating liquor by any retailer at less than cost to the retailer shall be prima facie evidence of both a violation of this part, and of intent to injure competitors or destroy substantially or lessen competition.

History.
Acts 2018, ch. 783, § 6.

Effective Dates.
Acts 2018, ch. 783, § 14. April 20, 2018.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

57-3-1004. Persons assisting or aiding in violation — Penalty.

Any individual who, as a director, officer, partner, member, or agent of any person violating this part, assists or aids, directly or indirectly, in such violation, equally with the person for whom such individual acts, commits a Class C misdemeanor.

History.
Acts 2018, ch. 783, § 6.

Effective Dates.
Acts 2018, ch. 783, § 14. April 20, 2018.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

57-3-1005. Contracts in violation of part void.

Any contract, express or implied, made by any person, firm, or corporation in violation of this part is declared to be an illegal and void contract and no recovery thereon shall be had.

History.
Acts 2018, ch. 783, § 6.

Effective Dates.
Acts 2018, ch. 783, § 14. April 20, 2018.

57-3-1006. Parties injured by violations — Right to maintain action — Injunction — Damages.

(a)(1) Any person or entity injured by any violation of this part, or any trade association which is representative of such a person or entity, may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin such violation.

(2) If, in such action, a violation of this part shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit.

(3) In such action, it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in the action, in addition to such injunctive relief and costs of suit, shall be

entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this part may maintain an action for damages alone in any court of general jurisdiction, and the measure of damages in such action shall be the same as prescribed in subsection (a).

History.
Acts 2018, ch. 783, § 6.

Effective Dates.
Acts 2018, ch. 783, § 14. April 20, 2018.

57-3-1007. Enforcement by commission.

(a) The commission shall administer and enforce this part.

(b)(1) For an initial violation of or noncompliance with any provision of this part by a retailer, a penalty shall be imposed not to exceed one thousand dollars ($1,000).

(2) For any second violation of or noncompliance with any provision of this part by any retailer who has previously been found in violation pursuant to subdivision (b)(1), a penalty shall be imposed not to exceed two thousand five hundred dollars ($2,500).

(3) For any subsequent violation or violations of or noncompliance with any provision of this part, by any retailer who has previously been found in violation pursuant to subdivision (b)(2), a penalty shall be imposed not to exceed five thousand dollars ($5,000).

(c) Any retailer who is assessed a civil penalty pursuant to this section, and who continues to engage in the unauthorized sale, distribution, or handling of intoxicating liquor in this state, either directly or through any agent or third party acting on behalf of such retailer, shall be charged with an additional violation of this part.

(d) Any retailer who is adversely affected by a decision of the commission may petition the commission for a hearing which will be held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) In enforcing this part, the commission shall consider the cost and effectiveness of administration and endeavor to administer this part in the most cost-efficient manner.

History.
Acts 2018, ch. 783, § 6.

Effective Dates.
Acts 2018, ch. 783, § 14. April 20, 2018.

57-3-1008. Applicability.

This part shall not apply to sales at retail made where intoxicating liquors are:

(1) Sold upon the complete final liquidation of a business;

(2) Advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court;

(3) Closeouts and case discounts; or

(4) Such other occasional discounts as defined by the commission.

History.
Acts 2018, ch. 783, § 6.

Effective Dates.
Acts 2018, ch. 783, § 14. April 20, 2018.

CHAPTER 4

CONSUMPTION OF ALCOHOLIC BEVERAGES ON PREMISES

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57-4-305. Notice of licensee's tax delinquency — Response.
57-4-306. Distribution of collections.
57-4-307. Damaged or unaccepted goods — Liability for tax.
57-4-308. Violation a misdemeanor.

PART 1

GENERAL PROVISIONS

57-4-101. Premises on which certain sales and consumption authorized.

(a) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of, or within the boundaries of, any:

(1) Hotel, commercial passenger boat company, paddlewheel steamboat company, restaurant, commercial airlines, or passenger trains meeting the requirements hereinafter set out, within the boundaries of the political subdivisions, wherein such is authorized under § 57-4-103;

(2) Premier type tourist resort or club as defined in § 57-4-102, to guests of such resort and to members and guests of such clubs, subject to the further provisions of this chapter other than § 57-4-103;

(3) Convention center as defined in § 57-4-102, to those in attendance at the convention center, subject to the further provisions of this chapter other than §§ 57-3-210(b)(1) and 57-4-103;

(4) Historic performing arts center as defined in 57-4-102, to those in attendance at the performing arts center, subject to the further provisions of this chapter other than § 57-4-103;

(5) Historic interpretive center as defined in § 57-4-102, to those in attendance at such interpretive center, subject to the further provisions of this chapter other than §§ 57-4-103 and 57-3-210(b)(1);

(6) Community theater as defined in § 57-4-102, to those in attendance at such community theater, subject to the further provisions of this chapter other than § 57-4-103;

(7) Historic mansion house site as defined in § 57-4-102, subject to the further provisions of this chapter other than § 57-4-103;

(8) Terminal building of a commercial air carrier airport as defined in § 57-4-102, subject both to the further provisions of this chapter other than § 57-4-103, and to the approval of a majority of the governing board of such commercial air carrier airport;

(9) Zoological institution as defined in § 57-4-102, to those in attendance at the zoological institution, subject to the further provisions of this chapter other than § 57-4-103. No such wine, alcoholic beverages or beer shall be served during the regular operating hours where the institution is open to the general public unless a special event is scheduled for fund-raising purposes which is by invitation or for which an admission is charged for such event;

(10) Museum as defined in § 57-4-102, to those in attendance at the museum, subject to the further provisions of this chapter other than § 57-4-103. No alcoholic beverage or beer shall be served during the regular operating hours when the museum is open to the general public except at a restaurant located on the premises of such museum or at a special event scheduled for fund-raising purposes when such event is either by invitation or admission is charged;

(11) Commercial airline travel club as defined in § 57-4-102, located within a terminal building of a commercial air carrier airport as defined in § 57-4-102, subject both to the further provisions of this chapter, other than § 57-4-103, and to the approval of a majority of the governing board of such commercial air carrier airport;

(12) Public aquarium as defined in § 57-4-102, to those in attendance at the public aquarium subject to this chapter;

(13) Aquarium exhibition facility as defined in § 57-4-102, to those in attendance at such facility subject to the provisions of this chapter. Such alcoholic beverages, wine and beer shall only be sold on such premises at special functions, wherein attendance is limited to invited guests or groups, the function is not open to the general public, and the area in which the function is held is not open to the general public during such function;

(14) Caterer licensed under this chapter as well as at such other sites as the licensed caterer has given advanced notice to the commission. Such sites shall be considered to be within the licensed premises for the purposes of this chapter;

(15) Sports authority facility as defined in § 57-4-102, to those in attendance at such sports authority facility, subject to the further provisions of this chapter. A sports authority facility as defined in § 57-4-102(34)(A) constitutes an urban park center for the purposes of the taxes provided in § 57-4-301;

(16) Theater as defined in § 57-4-102, to those in attendance at such theater, subject to the further provisions of this chapter;

(17) Retirement center as defined in § 57-4-102;

(18) Tennessee River resort district as defined in § 57-4-102, subject to the further provisions of this chapter other than § 57-4-103;

(19) Civic arts center as defined in § 57-4-102, to those in attendance at the civic arts center, subject to the further provisions of this chapter other than § 57-4-103;

(20) Limited service restaurant as defined in § 57-4-102, wherein such is authorized under § 57-4-103; and

(21) Festival operator as defined in § 57-4-102, to those in attendance at a festival, subject to the further provisions of this chapter, and except as otherwise provided in § 57-4-102.

(b) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, to be consumed on the premises of any:

(1) Permanently constructed facility within an urban park center as defined in § 57-4-102, to those in attendance at the urban park center, subject to the further provisions of this chapter other than §§ 57-4-103 and 57-3-210(b)(1);

(2) Any motor speedway as defined in § 57-4-102, to the patrons and guests of such motor speedway, subject to the further provisions of this chapter other than § 57-4-103. The phrase "premises of any motor speedway" includes any permanent or temporary structure erected on the motor speedway site as defined in § 57-4-102(23)(A); and

(3) Country club located on an historic property, as defined in § 57-4-102, to the patrons and guests of such country club, subject to the further provisions of this chapter other than § 57-4-103.

(c) It is lawful to sell wine, as defined in § 57-4-102, to be consumed on the premises of any:

(1) Restaurant located within the boundaries of any political subdivision which has authorized the sale of alcoholic beverages for consumption on the premises as provided in § 57-4-103, subject to the further provisions of this chapter. Notwithstanding the minimum seating requirement for a restaurant in § 57-4-102, a restaurant operating under this subsection (c) shall have a seating capacity of at least forty (40) people at tables, except in central business improvement districts located in counties having a population of eight hundred thousand (800,000) or more, according to the 2000 federal census or any subsequent federal census where such restaurants shall have a seating capacity of at least twenty-four (24) people; and

(2) Bed and breakfast establishment as defined in § 57-4-102, to the guests of the bed and breakfast establishment, subject to the further provisions of this chapter other than § 57-4-103.

(d) It is lawful to serve wine and other alcoholic beverages as defined in § 57-3-101, and beer as defined in § 57-6-102, to be consumed on the premises of any club as defined in § 57-4-102(8)(G), to the guests of the club, subject to the further provisions of this chapter other than § 57-4-103; provided, that such club is located in a county having a population of not less than one hundred three thousand one hundred (103,100) nor more than one hundred three thousand four hundred (103,400), according to the 1990 federal census or any subsequent federal census, and in a municipality which lies within two (2) contiguous counties.

(e) It is lawful to serve wine as defined in § 57-3-101, and beer as defined in § 57-6-102, to be consumed on the premises of any restaurant as defined in § 57-4-102(30)(F), located in the unincorporated areas of any county having a population of not less than thirty thousand two hundred (30,200) nor more than thirty thousand four hundred seventy-five (30,475), according to the 1990 federal census or any subsequent federal census, subject to the further provisions of this chapter other than § 57-4-103.

(f) It is lawful to serve wine as defined in § 57-3-101, to be consumed on the premises of any historic inn as defined in § 57-4-102, to the patrons and guests of the historic inn, subject to the further provisions of this chapter other than § 57-4-103.

(g) It is lawful for a charitable, nonprofit or political organization possessing a special occasion license pursuant to § 57-4-102 to serve or sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the designated premises, or sold or donated in sealed containers for off-premises consumption within the boundaries of a political subdivision wherein the sale of alcoholic beverages at retail has been approved pursuant to § 57-3-106 or wherein the sale of alcoholic beverages for consumption has been approved pursuant to § 57-4-103. A special occasion license may also be issued for an event within the unincorporated portion of a county if at least one (1) municipality in such county has approved the sale of alcoholic beverages at retail pursuant to § 57-3-106 or the sale of alcoholic beverages for consumption pursuant to § 57-4-103.

(h) Any hotel or motel licensed under this chapter may dispense sealed alcoholic beverages and beer to adult guests through locked, in-room units. Distilled spirits so dispensed shall be in bottles not exceeding fifty milliliters (50 ml.). No person under the age of twenty-one (21) shall be issued or supplied with a key by any hotel or motel for such units. Such units may only be located in any such hotel or motel if the voters of such municipality have approved the consumption of alcoholic beverages on the premises by referendum, and in any county in which such municipalities are located if the voters of such county have approved the consumption of alcoholic beverages on the premises by referendum.

(i) A restaurant or hotel licensed under this chapter may seek an additional license permitting the restaurant or hotel to distribute and sell wine, beer and other alcoholic beverages at locations other than the licensed premises if the

restaurant or hotel is providing catering services, if such location is within a jurisdiction where such sales are authorized. A caterer licensed under this chapter may distribute and sell wine, beer and other alcoholic beverages at locations other than the permanent catering hall if the caterer is providing catering services at a location that is within a jurisdiction where such sales are authorized.

(j) It is lawful to serve wine as defined in § 57-4-102 within a special historic district as defined in § 57-4-102 on Fridays and Saturdays. Such establishments serving wine within the special historic district shall not be required to obtain a special occasion license pursuant to § 57-4-102 or be required to obtain server permits pursuant to chapter 3, part 7 of this title. This section shall not apply to any restaurant or bar located within the special historic district.

(k) It is lawful to serve wine, as defined in § 57-3-101, to be consumed on the premises of any restaurant, as defined in § 57-4-102(30)(G), located in any county having a population of not less than sixty-nine thousand four hundred (69,400) nor more than sixty-nine thousand five hundred (69,500), according to the 2000 federal census or any subsequent federal census, subject to the further provisions of this chapter other than § 57-4-103.

(*l*) It is lawful to serve wine as defined in § 57-3-101, to be consumed on the premises of any restaurant as defined in § 57-4-102(30)(I), located in any county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census, subject to the further provisions of this chapter other than § 57-4-103.

(m) A premier type tourist resort, as defined in § 57-4-102(27)(EEE), licensed pursuant to this part, shall be allowed to sell beer, as defined in § 57-5-101(b), to its patrons or guests, for either on-premises or off-premises consumption provided such premier type tourist resort, as defined in § 57-4-102(27)(EEE), obtains a permit, pursuant to chapter 5 of this title, issued by the county or city where such premier type tourist resort is located.

(n) A licensee who qualifies for a restaurant license, limited service restaurant license, or hotel license may also serve alcoholic beverages in any area of the premises designated on the application that is used for the purpose of entertainment activities. Entertainment activities may include, but are not limited to, bowling, billiards, games, auditoriums, darts, or golf driving ranges. Any area used for entertainment activities shall have table service or be within close observation distance from the service area of the facility as determined by the commission.

(o) It is lawful to furnish, dispense, or give away alcoholic beverages and beer without a license or permit issued by the commission at a private party or private event.

(p) An entity licensed or applying for a license under subsection (a) may include in the entity's designation of its premises any contiguous area owned or controlled by the entity for purposes of on-premises consumption of alcoholic beverages and beer. If the contiguous area used for on-premises consumption is unenclosed, the entity shall make reasonable efforts to ensure that a

customer cannot leave the premises with an alcoholic beverage or beer purchased on the premises by using barriers to prevent the ingress and egress of customers to and from the premises. If more than one (1) entity licensed under subsection (a) operates within the same building or facility, the designations of premises under this subsection (p) may overlap; provided, that each entity serves alcoholic beverages and beer in a glass or cup identifying the entity selling the alcoholic beverages or beer for on-premises consumption.

History.

Acts 1939, ch. 49, § 3; C. Supp. 1950, §§ 6648.4 (Williams, § 6648.6); T.C.A. (orig. ed.), § 57-106; Acts 1967, ch. 211, § 1; 1972, ch. 682, § 1; 1972, ch. 756, §§ 1, 2; 1975, ch. 111, §§ 1, 2; 1979, ch. 401, § 1; T.C.A., § 57-152; Acts 1980, ch. 898, § 1; 1981, ch. 404, § 1; 1981, ch. 475, § 1; 1983, ch. 52, § 1; 1983, ch. 229, § 6; 1983, ch. 300, § 2; 1983, ch. 469, § 1; 1984, ch. 975, § 1; 1985, ch. 190, § 1; 1986, ch. 899, §§ 1, 2; 1987, ch. 444, §§ 1, 2; 1989, ch. 145, § 1; 1990, ch. 919, § 1; 1991, ch. 219, § 1; 1992, ch. 674, § 1; 1992, ch. 982, § 1; 1995, ch. 306, § 1; 1996, ch. 749, § 1; 1998, ch. 795, §§ 1, 5; 1998, ch. 939, § 1; 1999, ch. 314, § 3; 1999, ch. 525, § 1; 2000, ch. 657, § 1; 2001, ch. 64, § 1; 2001, ch. 74, § 2; 2001, ch. 84, § 2; 2001, ch. 371, § 1; 2001, ch. 383, §§ 1, 4; 2002, ch. 647, § 2; 2004, ch. 544, § 2; 2004, ch. 857, § 2; 2005, ch. 212, §§ 3, 4; 2005, ch. 253, § 1; 2006, ch. 602, § 1; 2008, ch. 634, § 1; 2010, ch. 647, § 2; 2010, ch. 927, § 1; 2010, ch. 1133, § 1; 2011, ch. 447, § 2; 2014, ch. 907, § 2; 2014, ch. 1001, § 11; 2015, ch. 336, § 1; 2015, ch. 367, § 1; 2015, ch. 391, § 4; 2016, ch. 874, § 2; 2017, ch. 142, § 2; 2017, ch. 147, §§ 7, 8; 2018, ch. 755, §§ 1, 3.

Compiler's Notes.

Acts 1989, ch. 145, § 3 provided that the alcoholic beverage commission is authorized to promulgate any rules which may be necessary to implement the provisions of this section.

For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2005, ch. 212, § 6 provided that:

"(a) The commissioner of revenue shall promulgate rules and regulations to effectuate the provisions of this act.

"(b) The commissioner of economic and community development shall promulgate rules and regulations to effectuate the provisions of this act.

"(c) The executive director of the alcoholic beverage commission shall promulgate rules and regulations to effectuate the provisions of this act.

"(d) All such rules and regulation shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5."

Acts 2018, ch. 755, which amended this section, contained two act sections 4. One of which amended § 57-4-102, and the other was the effective date provision.

Amendments.

The 2018 amendment added (a)(21) and (p).

Effective Dates.

Acts 2018, ch. 755, § 4. April 18, 2018.

Cross-References.

Certain 1987 amendments to section inapplicable to certain counties, § 57-4-104.

Hotels and motels, § 57-5-107.

Nonresident seller's permittees prohibited from interest in business licensed under this section, § 57-3-604.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 10.

Attorney General Opinions.

Applicability of local beer permit ordinance to liquor-by-the-drink license holders, OAG 99-098 (4/30/99).

Because sales of liquor by the drink are legal in all of the various establishments and places listed in T.C.A. § 57-4-101, so long as they obtain a proper license, a city may not, either by ordinance or referendum, limit sales of liquor by the drink to only some of the establishments and occasions listed in that section, OAG 02-092 (8/28/02).

Implementation of Tennessee River Resort District Act, OAG 05-161 (10/18/05).

A civic center could legally permit alcoholic beverages to be served during private engagements, so long as the service is provided by a restaurant, hotel or licensed caterer who complies with the requirements of T.C.A. §§ 57-4-101(i) and 57-4-203(i)(3), OAG 06-175 (12/8/06).

Hours for the sale of beer in a municipality located within a Tennessee iver resort district. OAG 10-92, 2010 Tenn. AG LEXIS 98 (8/17/10).

As a municipal corporation the city of Clarksville cannot obtain a license to sell liquor by the drink at any location or sell alcoholic beverages or beer to either private party lessees and guests or to the general public; no city employee or nonprofit corporation created or controlled by the city may obtain a permit to sell liquor by the drink or obtain a beer permit on behalf of the city. OAG 14-03, 2014 Tenn. AG LEXIS 5 (1/9/14).

Licensing and taxation of hotels selling alcohol for consumption on the premises. OAG 16-05, 2016 Tenn. AG LEXIS 3 (2/9/2016).

NOTES TO DECISIONS

1. Clubs.

A club which has a license for on-premises consumption of alcoholic beverages and beer from the alcoholic beverage commission under T.C.A. §§ 57-4-102 and 57-4-101(b) [now § 57-4-101(a)(2)] does not have an absolute right to a beer permit from a city beer board. State ex rel. Amvets Post 27 v. Beer Bd. of Jellico, 717 S.W.2d 878, 1986 Tenn. LEXIS 794 (Tenn. 1986).

57-4-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Alcoholic beverage" or "beverage" means and includes alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patented medicine or beer as defined in § 57-5-101(b). Notwithstanding any provision to the contrary in this title, "alcoholic beverage" or "beverage" also includes any product containing distilled alcohol capable of being consumed by a human being manufactured or made with distilled alcohol irrespective of alcoholic content, including any infused product;

(2) "Aquarium exhibition facility" means an enclosed facility possessing each of the following characteristics:

(A) The facility is owned and operated by a bona fide charitable or nonprofit organization that also owns and operates a "public aquarium" as defined in subdivision (29);

(B) The facility contains a minimum area of ten thousand square feet (10,000 sq. ft.); and

(C) The facility is used for either or both of the following purposes:

(i) The exhibition to the public of artifacts, physical objects, pictures and movies; or

(ii) To aid in the education of the public by means of interactive displays or stations, learning laboratories, and classroom areas for instruction in the physical sciences, natural history or other educational disciplines;

(3)(A) "Bed and breakfast establishment" has the same meaning as set forth in § 68-14-502(1)(A); provided, that such bed and breakfast establishment is located in a county having a population of not less than fifty-one thousand three hundred fifty (51,350) nor more than fifty-one thousand four hundred fifty (51,450), according to the 1990 federal census or any subsequent federal census and has eleven (11) furnished guest rooms;

(B) "Bed and breakfast establishment" also means an establishment:

(i) Founded in July 1987;

(ii) With twelve (12) rooms and five (5) cottages;

(iii) Located on approximately fifteen (15) acres;

(iv) Operating a full service day spa; and

(v) Located in a county with not less than eighty-nine thousand eight hundred (89,800) and not more than eighty-nine thousand nine hundred

(89,900), according to the 2010 or any subsequent federal census;

(4) "Bona fide charitable or nonprofit organization" means any corporation which has been recognized as exempt from federal taxes under § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)), or any organization having been in existence for at least two (2) consecutive years which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational or charitable purposes;

(5) "Bona fide political organization" means any political campaign committee as defined in § 2-10-102 or any political party as defined in § 2-13-101;

(6) "Caterer" means a business engaged in offering food and beverage service for a fee at various locations, which:

(A) Operates a permanent catering hall on an exclusive basis or restaurant;

(B) Has a complete and adequate commercial kitchen facility; and

(C) Is licensed as a caterer by the Tennessee department of health;

(7) "Civic arts center" means a complex that serves as a community center for the arts and further possesses the following characteristics:

(A) Has a performance hall with at least one thousand one hundred (1,100) seats;

(B) Has a flexible theater;

(C) Consists of two (2) buildings and an outdoor plaza between the buildings;

(D) Allows alcoholic beverages to be served when the civic arts center is hosting ticketed events, private functions or is rented to another party hosting an event open to the public; and

(E) Is located in a county having a population of not less than one hundred five thousand eight hundred (105,800) nor more than one hundred five thousand nine hundred (105,900), according to the 2000 federal census or any subsequent federal census;

(8)(A) "Club" means a nonprofit association organized and existing under the laws of this state, which has been in existence and operating as a nonprofit association for at least two (2) years prior to the application for a license hereunder, having at least one hundred (100) members regularly paying dues, organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any shareholder or member; and owning, hiring or leasing a building or space therein for the reasonable use of its members with suitable kitchen and dining room space and equipment and maintaining and using a sufficient number of employees for cooking, preparing and serving meals for its members and guests; provided, that no member or officer, agent or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of spirituous liquors, wines, champagnes or malt beverages beyond the amount of such salary as may be fixed by its members at an annual meeting or by its governing body out of the general revenue of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The premises, as

provided in § 57-4-101(a)(2) for a club, shall also include the golf course, tennis courts and the area immediately surrounding the swimming pool, if a club offers such amenities. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with the definition above;

(B) "Club" also means an organization composed of members of the Tennessee national guard, air national guard, or other active or reserve military units which operate facilities located on land owned or leased by this state and which are operated exclusively for the pleasure and recreation of such organization's members, dependents and guests and which are generally referred to as "NCO Clubs" or "Officers Clubs." Such NCO or officers clubs shall be subject to all of the requirements of subdivision (8)(A), except for those requirements relating to having a kitchen, kitchen equipment, and employees;

(C) "Club" also means a nonprofit association organized and existing under the laws of this state which is located in a county having a population of not less than twenty-eight thousand six hundred sixty (28,660) nor more than twenty-eight thousand six hundred ninety (28,690), according to the 1980 federal census or any subsequent federal census. Such club shall be located in a development containing no less than four hundred forty (440) acres and shall be organized and operated exclusively for the pleasure, recreation and other nonprofit purposes of its members and their guests. No part of the net earnings of the association shall inure to the benefit of any shareholder or member. The club shall provide to its members a regulation golf course, tennis courts, and a swimming pool. The club shall own, hire or lease a building or buildings for the reasonable use of its members with suitable kitchen and dining room space and equipment. Such club shall maintain and use a sufficient number of employees for cooking, preparing and serving meals for its members and guests. No member or officer, agent or employee of the club shall be paid, or directly or indirectly receive in the form of salary or other compensation any profits from the sale of alcoholic beverage or malt beverage beyond the amount of such salary as may be fixed by its members at an annual meeting, or by its governing body out of the general revenues of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with this definition;

(D)(i) "Club" also means a for-profit recreational club organized and existing under the laws of this state and which has been in existence and operating for at least two (2) years prior to the application for a license. Such club shall have at least one hundred (100) members regularly paying dues, and shall be organized and operated exclusively for recreation, and providing to its members a regulation golf course and

owning, hiring or leasing a building or buildings for the reasonable use of its members, with suitable kitchen and dining room space and equipment, and lodging facilities consisting of not less than ten (10) rooms. Such club shall maintain and use a sufficient number of employees for cooking, preparing and serving meals for its members and guests and providing lodging facilities to its members and guests. Other than the payment of dividends to the shareholders of the club from its net income derived from all of its operations, no member or officer, agent or employee of the club shall be paid, or shall directly or indirectly receive in the form of salary or other compensation, any profits from the sale of alcoholic beverages or malt beverages beyond the amount of such salary as may be fixed by the shareholders of the corporation at an annual meeting by its governing body out of the general revenues of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with this definition. The alcoholic beverage commission shall not issue a license to any for-profit recreational club which restricts membership based on race or religion or sex. In any proceeding concerning a license denial or revocation under this subdivision (8)(D)(i), no quota or numerical percentage shall be used to establish proof of the prohibited discrimination among the club's membership;

(ii) Notwithstanding § 57-4-101(a)(2) to the contrary, this subdivision (8)(D) shall not apply in any municipality which has not approved the sale of alcoholic beverages for consumption on the premises pursuant to § 57-4-103;

(iii) This subdivision (8)(D) only applies in counties having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800), according to the 1980 federal census or any subsequent federal census;

(E)(i) "Club" also means a for-profit recreational club, organized and existing under the laws of this state, which has at least two hundred fifty (250) dues-paying members who pay dues of at least one hundred dollars ($100) a year. Such club shall have golf courses containing at least twenty-seven (27) holes, collectively, for the use of its members and guests, and have suitable kitchen and dining facilities. Such club shall serve at least one (1) meal daily, five (5) days a week. Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin;

(ii) This subdivision (8)(E) only applies in counties having a population of not less than eighty thousand (80,000) nor more than eighty-

three thousand (83,000), according to the 1990 federal census or any subsequent federal census;

(F)(i)*(a)* "Club" also means a for-profit recreational club, organized and existing under the laws of this state, which has at least two hundred twenty-five (225) dues-paying members who pay dues of at least three hundred dollars ($300) a year. Such club shall have a clubhouse with not less than five thousand square feet (5,000 sq. ft.), golf courses containing at least eighteen (18) holes, collectively, for the use of its members and guests, and have suitable kitchen and dining facilities. Such club shall serve at least one (1) meal daily, five (5) days a week. Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin. It is the express intention of the general assembly that the law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced in such clubs;

(b) The premises, as provided in § 57-4-101(a)(2) for a club, whether such parcels comprising the club premises are contiguous or not, shall also include the golf course, including beverage carts; tennis courts; all areas of the clubhouse; the area immediately surrounding the swimming pool, if a club offers such amenities; and all other related recreational facilities;

(ii) This subdivision (8)(F) only applies in any county having a population of:

not less than	nor more than
21,800	22,100
22,600	23,000
34,850	35,000
80,000	83,000
103,100	103,400

according to the 1990 federal census or any subsequent federal census;

(G) "Club" also means a clubhouse owned and operated by a for-profit corporation, which is open to the public but has at least one hundred fifty (150) private members and seats at least one hundred (100) persons, that is a planned part of a residential development consisting of no less than two hundred fifty (250) acres and at least one hundred ninety (190) residential units, and such development contains an eighteen-hole golf course under separate ownership; provided, that such club is located in a county having a population of not less than one hundred three thousand one hundred (103,100) nor more than one hundred three thousand four hundred (103,400), according to the 1990 federal census or any subsequent federal census and in a municipality which lies within two (2) contiguous counties;

(H) "Club" also means a facility owned by a for-profit corporation incorporated in Tennessee prior to September 30, 2000, as a private club

which does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, religion or national origin, and further possesses the following characteristics:

(i) Is located within three (3) miles of a municipal golf course owned and operated by a home-rule municipality located in a county having a charter form of government and having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eighty-two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census;

(ii) Has, on July 3, 2002, a minimum of three hundred (300) members paying annual dues with a copy of membership applications on file on the premises, and which issues to its members a membership card which authorizes admittance of the member and bona fide guests of such member; and

(iii) Has a kitchen and dining area having a minimum seating capacity of seventy-five (75) in a building having at least eighteen hundred square feet (1800 sq. ft.);

(I)(i) "Club" also means a for-profit recreational club organized and existing under the laws of this state which has been in existence and operating for at least two (2) years prior to June 11, 2003, and which is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census, and further possesses the following characteristics:

(a) Has at least one hundred seventy-five (175) members paying annual dues and does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, religion or national origin;

(b) Is organized and operated exclusively for recreation and providing a regulation eighteen-hole golf course for the use of its members and guests, and also offers for the use of its members and guests a swimming pool and tennis facility; and

(c) Has a clubhouse with not less than three thousand square feet (3,000 sq. ft.) with suitable kitchen, dining facilities and equipment, serving at least one (1) meal daily, at least five (5) days a week;

(ii) Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold;

(iii) It is the express intention of the general assembly that the law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced by such club;

(J) "Club" also means a for-profit recreational club, organized and existing under the laws of this state, which is located in any county having a population of not less than one hundred thirty thousand (130,000) nor more than one hundred thirty-one thousand (131,000), according to the 2000 federal census or any subsequent federal census, and further possesses the following characteristics:

(i) The club shall be adjacent to a residential development consisting of at least one hundred (100) residential units, and the club property and such residential development shall consist of at least two hundred (200) acres;

(ii) The residential development shall be adjacent to a lake with an area greater than twenty (20) acres;

(iii) The club shall be organized and operated to provide to its members, their guests, and others an eighteen-hole golf course and amenities provided by other similar clubs;

(iv) The club shall serve at least one (1) meal daily, five (5) days a week;

(v) The club shall have a clubhouse with not less than three thousand square feet (3,000 sq. ft.) with suitable kitchen, dining facilities and equipment; and

(vi) The club shall not discriminate against any person on the basis of gender, race, religion or national origin;

(K)(i) "Club" also means a for-profit recreational club organized and existing under the laws of this state that has been in existence and operating for at least two (2) years prior to March 31, 2003, and that is located in any county not having a metropolitan form of government and having a population of not less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, and further possesses the following characteristics:

(a) Has at least two hundred twenty-five (225) members paying monthly or annual dues, or both, and does not discriminate against members or potential members or bona fide guests of the members on the basis of gender, race, religion or national origin;

(b) Is organized and operated exclusively for recreation and provides a regulation eighteen-hole golf course for the use of its members and guests, and may or may not also provide for the use of its members and guests a swimming pool and tennis facility; and

(c) Has a clubhouse with not less than ten thousand square feet (10,000 sq. ft.) with suitable kitchen, dining facilities and equipment, serving at least one (1) meal daily, at least five (5) days a week;

(d) The club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based on the volume of those beverages sold;

(ii) It is the express intention of the general assembly that the law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced by the club;

(L)(i) "Club" also means a for-profit recreational club, organized and existing under the laws of this state, which is located in a county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), as of the 2010 federal census or any subsequent federal census, and further possesses the following characteristics:

(a) Has at least three hundred (300) members, as of December 23, 2015, paying dues with a copy of membership applications on file on

the premises and which issues to its members a membership card which authorizes admittance of the member and bona fide guests of such member;

(b) Is organized and operated exclusively for recreation and provides a regulation eighteen-hole golf course for the use of its members and guests, and also may offer for the use of its members and guests a swimming pool and other recreational amenities;

(c) Has a clubhouse with not less than ten thousand square feet (10,000 sq. ft.) with a suitable kitchen, dining facilities, and equipment, serving at least one (1) meal daily at least five (5) days a week;

(d) The club may not compensate or pay any officer, director, agent, or employee any profits from the sale of alcoholic or malt beverages based on the volume of those beverages sold; and

(e) The premises, as provided in § 57-4-101(a)(2) for a club, whether such parcels comprising the club premises are contiguous or not, shall also include the golf course, including beverage carts; tennis courts; all areas of the clubhouse; the area immediately surrounding the swimming pool, if a club offers such amenities; and all other related recreational facilities; and

(f) Does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, religion, or national origin;

(ii) It is the express intention of the general assembly that the law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced by the club;

(M)(i) "Club" also means a for-profit recreational club, organized and existing under the laws of this state, which is located in a county having a population of not less than one hundred twenty-two thousand nine hundred (122,900) nor more than one hundred twenty-three thousand (123,000), according to the 2010 federal census or any subsequent federal census, and further possesses the following characteristics:

(a) Has at least three hundred (300) members, as of January 1, 2017, paying dues with a copy of membership applications on file on the premises and that issues to its members a membership card which authorizes admittance of the member and bona fide guests of such member;

(b) Is located within a planned residential development consisting of no less than six hundred (600) acres and at least three hundred (300) residential dwelling units, and such residential development contains an eighteen-hole golf course;

(c) Is organized and operated exclusively for recreation and provides a regulation eighteen-hole golf course for the use of its members and guests, and also may offer its members and guests the use of a swimming pool, tennis courts, and other recreational amenities;

(d) Has a clubhouse with not less than nine thousand square feet (9,000 sq. ft.) with a suitable kitchen, dining facilities, and equipment, serving at least one (1) meal daily at least five (5) days a week;

(e) The club does not compensate or pay any officer, director, agent, or employee from any profits from the sale of alcoholic or malt

beverages based on the volume of those beverages sold;

(f) The premises, as provided in § 57-4-101(a)(2), for a club, whether such parcel comprising the club premises are contiguous or not, shall also include the golf course; tennis courts; all areas of the clubhouse; the area immediately surrounding the swimming pool, if a club offers such amenities; and all other related recreational facilities; and

(g) Does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, color, age, religion, or national origin; and

(ii) It is the express intention of the general assembly that the law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced by the club;

(9) "Commercial airline" includes any airline operating in interstate commerce under a certificate of public convenience and necessity issued by the appropriate federal or state agency, or under an exemption from the requirement of obtaining a certificate of public convenience and necessity but otherwise regulated by an appropriate federal or state agency, with adequate facilities and equipment for serving passengers, on regular schedules, or charter trips, while moving through any county of the state, but not while any such commercial airline is stopped in a county or municipality that has not legalized such sales;

(10) "Commercial airline travel club" means an organization established and operated by or for a commercial airline as defined in this section for the convenience and comfort of airline passengers;

(11) "Commercial passenger boat company" means a company that operates one (1) or more passenger vessels for hire upon navigable waterways and is licensed by the United States Coast Guard to carry not less than fifty (50) passengers on a single vessel. Such company shall operate out of any county that has a population in excess of two hundred eighty-five thousand (285,000) or not less than eighty-three thousand three hundred (83,300) nor more than eighty-three thousand four hundred (83,400), according to the 1980 federal census or any subsequent federal census. No commercial passenger boat company licensed pursuant to this chapter shall sell any type of alcoholic beverage or beer while such boat is docked within the boundaries of any local government which has not approved the sale of alcoholic beverages pursuant to § 57-4-103;

(12) "Commission" means the alcoholic beverage commission, created pursuant to chapter 1 of this title;

(13)(A) "Community theater" means a facility or theater possessing each of the following characteristics:

(i) The community theater is at least eight (8) years old;

(ii) The theater is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member or officer, agent or employee of any community theater shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such

salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the community theater, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the theater. No alcoholic beverages or beverages of any kind shall be possessed or consumed inside the auditorium of such theater during performances in such auditorium;

(iii) The theater provides or leases facilities for theatrical programs of cultural, civic and educational interest; and

(iv) The theater is located in any county having a population of not less than seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census;

(B) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility has a performance hall seating not less than two hundred fifty (250) persons, a resource library, rehearsal rooms, and permanent exhibition space of not less than nine thousand square feet (9,000 sq. ft.);

(ii) The facility is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member or officer, agent or employee of any community theater shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the facility, and in furtherance of the purposes of the organization;

(iii) The facility provides or leases facilities for concerts and programs of cultural, civic and educational interest; and

(iv) The facility is located in any county having a population of not less than two hundred eighty-five thousand (285,000) nor more than two hundred eighty-six thousand (286,000), according to the 1990 federal census or any subsequent federal census;

(C) Alcoholic beverages may be sold at a community theater only during one (1) performance or benefit program a day and only one (1) hour before, during and one (1) hour after the performance or benefit program;

(D) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility is located in a building that is at least eighty (80) years old;

(ii) The facility has a performance hall seating approximately two hundred fifty (250) persons;

(iii) The facility is operated by a not-for-profit corporation that is exempt from taxation under § 501(c) of the Internal Revenue Code of

1954 (26 U.S.C. § 501(c)), and no member or officer, agent or employee of any community theater is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond the amount of the salary as may be fixed by its governing body for the reasonable performance of the person's assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing and maintenance of the facility, and in furtherance of the purposes of the organization;

(iv) Alcoholic beverages shall only be sold before or after performances or during intermissions in the performances, and no alcoholic beverages shall be consumed inside the auditorium of the facility; and

(v) The facility is located within a municipality that has authorized the sale of alcoholic beverages for consumption on the premises, in a referendum in the manner prescribed by § 57-3-106, in any county having a population of not less than thirty-three thousand five hundred twenty-five (33,525) nor more than thirty-three thousand six hundred (33,600), according to the 2000 federal census or any subsequent federal census;

(E) "Community theater" also includes a privately owned facility possessing each of the following characteristics:

(i) Is a community theater in continuous operation since 1943;

(ii) Is primarily a volunteer organization with limited salaried staff;

(iii) Has an auditorium with more than three hundred (300) seats;

(iv) Is located on an historic square and is allowed to sell alcoholic beverages at up to five (5) special events annually that are held on the historic square along with being allowed to sell alcoholic beverages as provided in subdivision (13)(C); and

(v) Is located in any county having a population of not less than seventy-one thousand three hundred (71,300) nor more than seventy-one thousand four hundred (71,400), according to the 2000 federal census or any subsequent federal census;

(F) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility is at least twenty-seven (27) years old;

(ii) The facility has a performance hall seating not less than one hundred fifty (150) persons and not more than five hundred (500) persons;

(iii) The facility is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member or officer, agent or employee of any community theater is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond the amount of the salary as may be fixed by its governing body for the reasonable performance of the person's assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing and maintenance of the facility, and

in furtherance of the purposes of the organization; and

(iv) The facility is located in any county having a population of not less than one hundred thirty-four thousand seven hundred (134,700) nor more than one hundred thirty-four thousand eight hundred (134,800), according to the 2000 federal census or any subsequent federal census;

(G) "Community theater" also includes a municipally owned facility possessing each of the following characteristics:

(i) Is a community theater in continuous operation since 1980;

(ii) Has an auditorium with more than three hundred (300) seats;

(iii) Provides or leases facilities for concerts, plays and programs of cultural, civic and education interest; and

(iv) The facility is located in any municipality that has authorized the sale of alcoholic beverages for consumption on the premises, in a referendum in the manner prescribed by § 57-3-106, and the municipality has a population of not less than twenty-three thousand nine hundred twenty (23,920), nor more than twenty-three thousand nine hundred thirty (23,930), according to the 2000 federal census or any subsequent federal census;

(H) "Community theater" also means a theater possessing each of the following characteristics:

(i) The theater was founded in 1923;

(ii) The theater has a main performance hall with not less than three hundred eighty (380) seats;

(iii) The theater has an auxiliary performance hall with not less than two hundred (200) seats;

(iv) The facility is operated by a not-for-profit corporation that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member, officer, agent, or employee of the theater is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond the amount of the salary as may be fixed by its governing body for the reasonable performance of the person's assigned duties. All profits from the sale of alcoholic beverages by the not-for-profit corporation must be used for the operation, renovation, refurbishing, and maintenance of the theater, and in furtherance of the purposes of the organization. Alcoholic beverages may be sold before, during, and after performances, and may be consumed inside any auditorium or performance hall within the theater; and

(v) The theater is located within one thousand feet (1,000′) of the Tennessee River in a city with a population of one hundred sixty-seven thousand six hundred seventy-four (167,674), according to the 2010 federal census or any subsequent federal census;

(14)(A) "Convention center" means a facility possessing each of the following characteristics:

(i) Owned by the state, municipal and/or county government, or a nonprofit, tax exempt, charitable organization that operates a symphony orchestra, and leased or operated by that government or by a

nonprofit charitable corporation established to operate such facility;

(ii) Designed and used for the purposes of holding meetings, conventions, trade shows, classes, dances, banquets and various artistic, musical or other cultural events;

(a) A convention center does not include a building located within one thousand (1,000) yards of both a student museum and a zoological park; provided, that any restaurant, located within a former world's fair site or a zoological park and which meets the requirements of subdivision (30), shall be eligible for licensure under this chapter as long as the requirements of this chapter are otherwise met;

(b) A convention center also does not include a building which is more than twenty (20) years old and is located in any county having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800), according to the 1980 federal census or any subsequent federal census;

(iii)*(a)* Except as provided for in (14)(A)(iii)(*b*), which state-owned facility, operated by a nonprofit charitable corporation established to operate such facility, has a designated, restricted area outside the seating area of any theater within which area the consumption of such alcoholic beverages shall be permitted. The sale of such alcoholic beverages in such facility is limited to no more than one (1) hour and fifteen (15) minutes prior to a meeting, show, performance, reception, or other similar event, and to no later than thirty (30) minutes after such event; and

(b) In a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census, which state-owned facility, operated by a nonprofit charitable corporation established to operate such facility, or facility owned by a nonprofit, tax exempt, charitable organization that operates a symphony orchestra, has designated an area within or adjacent to any theatre or meeting space, or adjacent to the facility within which area the consumption of alcoholic beverages shall be permitted. Nothing herein shall restrict the ability of a convention center, as defined herein, from adjusting the designated area within or adjacent to its theatre areas, upon adequate prior notice to the commission;

(iv) Located in a municipality having a population in excess of one hundred fifty thousand (150,000) and in a county having a population in excess of two hundred thousand (200,000), or both, according to the 1980 federal census or any subsequent federal census;

(v) A convention center licensed under this subdivision (14)(A) shall have the privilege of granting a franchise for the provision of food or beverage, including alcoholic beverages, on its premises, and the holder of the franchise shall also be considered a convention center under this subdivision (14)(A);

(B) "Convention center" also means a facility meeting the criteria of subdivision (14)(A)(i) and (ii) and located in a premiere resort city as defined by § 67-6-103(a)(3)(B)(i);

(C) "Convention center" also means a facility possessing each of the following characteristics:

(i) Owned by a county public building authority at the time of development;

(ii) Designed and used for the purposes of attracting conventions, business travelers, tourists and other visitors to promote economic development;

(iii) Located at the intersection of Interstate 24 and Highway 41 near mile marker 114;

(iv) Occupies an area of not less than approximately thirteen thousand five hundred square feet (13,500 sq. ft.); and

(v) Includes a full commercial kitchen to provide meals and catering services;

(D) "Convention center" also means a facility possessing each of the following characteristics:

(i) Is owned by a quasi-governmental development agency;

(ii) Is designed and used for the purposes of attracting conventions, business travelers and tourists to the area and is vital in promoting economic development, fostering community activities, providing training and seminar space for business and industries and in encouraging tourism;

(iii) Is available for community, industry and private events;

(iv) Is the only one of its kind in the area;

(v) Has a seating capacity of approximately three hundred (300) and is fully equipped with tables, chairs, linens, dishware and a catering kitchen;

(vi) Occupies an area of approximately eight thousand five hundred square feet (8,500 sq. ft.) on acreage surrounding Tellico Lake; and

(vii) Is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-four thousand six hundred (44,600), according to the 2010 federal census or any subsequent federal census; and

(E) No member or officer, agent or employee of any convention center as defined by this section shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of spirituous liquors, wines, champagnes, malt beverages or any other alcoholic beverage beyond the amount of such salary as may be fixed by its governing body out of the general revenue of the center. All profits from the sale of such alcoholic beverages shall be used for the operation and maintenance of the convention center;

(15) "Country club located on an historic property" means a country club that is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-five thousand (45,000), according to the 1990 federal census or any subsequent federal census, and has the following characteristics:

(A) Sits on real property that was formerly the home of the International Printing Pressmen Union;

(B) Has a dining facility; and

(C) Is located adjacent to an eighteen-hole golf course;

(16)(A) "Festival operator" means a person licensed under this subdivision (16) who is either a for-profit business operating a festival for a period of up to seven (7) days in length in which alcoholic beverages or beer will be sold, given away, or otherwise dispensed or a third party with whom such for-profit business engages to conduct alcoholic beverage or beer sales during such festival;

(B) The commission shall issue a license to a festival operator upon the payment of a fee of one thousand dollars ($1,000) per day of the festival, and the submission of an application on a form prescribed by the commission that provides proof satisfactory of the following information, to the satisfaction of the commission:

(i) The premises on which alcoholic beverages or beer will be served, sold, dispensed, or consumed is sufficiently designated, enclosed, secured, and maintained;

(ii) Adequate security for the festival is provided;

(iii) The number and location of each point of sale in which alcoholic beverages or beer will be served, sold, dispensed, or consumed is specified. If the operator of any such point of sale, including any person or entity that receives any portion of the proceeds of the sale of alcoholic beverages or beer from that point of sale, is different from the festival operator, the name and relevant information of such other operator must be specified on the application to the commission, and the commission may determine that such other operator is required to obtain an additional festival operator license;

(iv) The staff selling, serving, or dispensing alcoholic beverages or beer are adequately trained and supervised in the service of alcoholic beverages and beer and on the applicable laws regarding such service;

(v) The city or county in which, or the state governmental entity responsible for the property on which, the festival is to be held has approved the festival; and

(vi) If the applicant intends to sell, serve, or dispense beer, the applicant has a beer permit issued in accordance with chapter 5 of this title;

(C) No person licensed under this title, operating in conjunction with a festival operator licensee, or performing any activities for which a license is otherwise required under this title, other than a festival operator or special occasion licensee licensed under this section, may provide any service, item, or other thing of value to a festival operator or with respect to a festival operator's festival, except as may be expressly authorized by the commission. Additionally, no festival operator may receive or accept any item or service that a person under this subdivision (16) is prohibited from providing. All alcoholic beverages used for the festival must be purchased from wholesalers licensed under § 57-3-203. Notwithstanding any law to the contrary, a wholesaler may buy back any unopened and resalable bottles of alcoholic beverages at the end of the festival. A wholesaler shall keep all records, as may be required by the commission, necessary to document the purchase of such products pursuant to this subdivision (16);

(D) All applicable taxes, including the tax levied on the sale of alcoholic beverages for consumption on the premises under § 57-4-301, must be remitted as required by law;

(E) Alcoholic beverages and beer may be sold, given away, dispensed, or consumed only within hours sufficient to ensure adequate public health, safety, and welfare as determined by the commission or local beer board, as applicable;

(F) Notwithstanding any law to the contrary, if the commission finds that any of the requirements of this subdivision (16) have not been, or are not being, met by a festival operator during a festival or after the completion of a festival, or that the festival operator misrepresented information in the person's application, the commission may use the failure or misrepresentation as the basis to summarily suspend the license of the festival operator, to deny any future applications for a festival operator license for a period of up to two (2) years after the festival in which the failure or misrepresentation occurred, or to issue a fine of up to ten thousand dollars ($10,000) per violation, which disciplinary action must be resolved prior to the issuance of any new festival operator license to the festival operator;

(17)(A) "Historic inn" means a historic building that is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-five thousand (45,000), according to the 1990 federal census or any subsequent federal census, and has the following characteristics:

(i) Was built in 1824 and was formerly the oldest continuously operating inn in Tennessee;

(ii) Was once visited by United States Presidents Andrew Jackson, Andrew Johnson and James K. Polk, all of whom stayed and dined there; and

(iii) Has a dining facility and a total of nine (9) rooms and suites;

(B) "Historic inn" also means a country inn that is located in any county having a population of not less than seventy-one thousand one hundred (71,100) nor more than seventy-one thousand two hundred (71,200), according to the 2000 federal census or any subsequent federal census, and has the following characteristics:

(i) Has been in operation since 1938;

(ii) Is located within one-half (½) mile of the Great Smoky Mountains National Park;

(iii) Has a total of twenty-four (24) guest rooms and a dining facility offering fine dining to guests and other patrons with a seating capacity of no more than sixty (60); and

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(C) "Historic inn" also means an inn that has all of the following characteristics:

(i) Contains at least ten (10) transient guest rooms in the main house;

(ii) Has a separate meeting lodge and facility that also houses at least four (4) transient suites;

(iii) Has at least two (2) kitchens on the premises and offers at least two (2) meals daily;

(iv) Has an open-air, outdoor, sylvan chapel suitable for the accommodation of wedding ceremonies;

(v) Provides entertainment in the form of cooking demonstrations, storytelling and dulcimer playing;

(vi) Is listed in Distinguished Inns of North America, 16th Edition, by Select Registry;

(vii) Is located in any county having a population of not less than one hundred five thousand eight hundred (105,800) nor more than one hundred five thousand nine hundred (105,900), according to the 2000 federal census or any subsequent federal census; and

(viii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(18)(A) "Historic interpretive center" means a facility possessing each of the following characteristics:

(i) The center is located in an historic area of town where structures listed on the national register of historic places are located;

(ii) The center operates as a not-for-profit corporation that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member or officer, agent or employee of any historic interpretive center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of the assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic interpretive center, and in furtherance of the purposes of the organization. Alcoholic beverages may be consumed inside the center at locations designated by the board of the not-for-profit corporation;

(iii) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, musical concerts, films, receptions, exhibitions, seminars or meetings; and

(iv) The center is located in any county having a population of not less than seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census;

(B) "Historic interpretive center" also means a commercially operated facility owned by a not-for-profit organization possessing each of the following characteristics:

(i) Is located on the Cumberland Plateau, within one (1) mile of a national river and recreation area;

(ii) Offers historic interpretation of Victorian-era British architecture, lifestyle, and settlement on the Cumberland Plateau in the 1880s and thereafter;

(iii) Operates public education programs in multiple historic buildings built from 1880 to 1884, including the oldest unchanged and preserved public library in America;

(iv) Preserves the historic character of a British settlement on the Cumberland Plateau in the 1880s through a board of directors engaged in land acquisition and management, design review of new construction and renovation, and the public enjoyment of period crafts, music, and folklife through the organization of festivals, support for local artists through the sale of arts and crafts in a commissary;

(v) Owns, sells, and develops home sites for construction of design-approved homes;

(vi) Offers overnight accommodations to visitors in historic inn and cottage settings;

(vii) Operates a restaurant serving breakfast, lunch, and dinner to visitors, community residents, guests, and members of the public;

(viii) Attracts thousands of visitors annually from around the world;

(ix) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(x) Is located within any county having a population of not less than nineteen thousand five hundred (19,500) nor more than nineteen thousand seven hundred seventy five (19,775), according to the 2000 federal census or any subsequent federal census;

(C) "Historic interpretive center" also means a facility possessing each of the following characteristics:

(i) Was founded in 1983;

(ii) Is located on Martin Luther King Boulevard;

(iii) Provides programs of historical, cultural, civic, and educational interest, including, but not limited to, art exhibitions and musical concerts;

(iv) Is owned by a municipal or county government;

(v) Alcoholic beverages shall only be sold at the center before or during performances; and

(vi) Is located in any county having a population of not less than three hundred thirty-six thousand four hundred (336,400) nor more than three hundred thirty-six thousand five hundred (336,500), according to the 2010 federal census or any subsequent federal census;

(19) "Historic mansion house site" means the buildings and grounds of a historic mansion house, located in any county having a metropolitan form of government, included in the Tennessee register of historic places, and operated by the Association for the Preservation of Tennessee Antiquities, and including Association for the Preservation of Tennessee Antiquities sites owned by this state. "Historic mansion house site" also means the buildings and grounds of an historic mansion house located in any county having a metropolitan form of government which has been conveyed by this state in trust to a board of trustees created and appointed in accordance with §§ 4-13-103 and 4-13-104, and for admission to which reasonable fees are charged as provided in § 4-13-105. This subdivision (19) shall apply only to counties having a population of four hundred fifty thousand (450,000) or greater, according to the 1980 federal census or any subsequent census;

(20)(A) "Historic performing arts center" means a facility possessing each of the following characteristics:

(i) The center is located in a restored theater that is at least fifty (50) years old and listed on the national register of historic places;

(ii) The center is operated by a for-profit corporation, or not-for-profit corporation which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954(26 U.S.C. § 501(c)), as amended, where no member or officer, agent or employee of any historic performing arts center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic performing arts center, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the center;

(iii) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, stage plays, musical concerts, films, dance performances, receptions, exhibitions, seminars or meetings; and

(iv) The center is located in any county having a population of:

not less than	nor more than
143,900	144,000
300,000	400,000
700,000	

according to the 1980 federal census or any subsequent federal census;

(B) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) The center is located in a restored theater or music hall that is at least fifty (50) years old and listed on the national register of historic places;

(ii) The center is operated by a for-profit organization, or a not-for-profit organization that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, and where no member, officer, agent or employee of the not-for-profit organization receives any incentive compensation relating directly to the sale of alcoholic beverages beyond the amount of such salary and other compensation as may be fixed by the not-for-profit organization's governing body for the reasonable performance of such member's, officer's, agent's or employee's assigned duties. A portion of the profits from the sale of alcoholic beverages at the center shall be used for the operation, renovation, refurbishing or general maintenance of the center. Alcoholic beverages shall only be sold at the center before, during or after performances. Alcoholic beverages may be consumed inside the center at locations designated by its governing body;

(iii) The center provides facilities for programs of cultural, civic, and

educational interest, including, but not limited to, stage plays, musical concerts, films, dance performances, receptions, exhibitions, seminars or meetings; and

(iv) The center is located in any county having a population in excess of five hundred thousand (500,000), which has a metropolitan form of government;

(C) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) Was opened in 1921;

(ii) Is on the national register of historic places;

(iii) Is located on Broad Street;

(iv) Provides programs of cultural, civic, and educational interest, including, but not limited to, operas and musical concerts;

(v) Is owned by a municipal or county government, or nonprofit, tax exempt, charitable organization. Alcoholic beverages shall only be sold at the center before, during or after performances; and

(vi) Is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(D) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) Was opened in 1924;

(ii) Was originally designed as a municipal auditorium and all-purpose exhibition hall;

(iii) Is located on McCallie Avenue;

(iv) Is owned by a municipal or county government, or nonprofit, tax exempt, charitable organization. Alcoholic beverages shall only be sold at the center before, during or after performances;

(v) Provides programs of cultural, civic, and educational interest, including, but not limited to, stage plays and musical concerts; and

(vi) Is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(E) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) Is on the national register of historic places;

(ii) Was built in 1937;

(iii) Is located on Main Street;

(iv) Is an entertainment venue for live performances, movies and other events. Alcoholic beverages shall only be sold at the center before, during or after the performances, movies or other events; and

(v) Is located in any county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census;

(F) "Historic performing arts center" also means a facility possessing

each of the following characteristics:

(i) Was built in 1931;

(ii) Is on the national register of historic places;

(iii) Is maintained by a not-for-profit corporation which is exempt from taxation under § 501(c) (26 U.S.C. § 501(c)), of the Internal Revenue Code of 1954 as amended;

(iv) Has an auditorium that seats more than seven hundred fifty (750) people;

(v) Provides programs of cultural, civic, and educational interest, including, but not limited to, stage plays and musical concerts; and

(vi) Is located in any county having a population of not less than one hundred fifty-three thousand (153,000) nor more than one hundred fifty-three thousand one hundred (153,100), according to the 2000 federal census or any subsequent federal census;

(G) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) The center:

(a) Is located adjacent to a restored theater that is at least fifty (50) years old and listed on the national register of historic places; and

(b) Shares a plaza with such restored theater;

(ii) The center is operated by a for-profit corporation, or not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member or officer, agent or employee of any historic performing arts center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic performing arts center, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the center. Alcoholic beverages may be sold before, during, and after events or during intermissions in such events;

(iii) The center provides facilities for programs of cultural, civic, and educational interest to further the mission of the for-profit or not-for-profit corporation, including, but not limited to, stage plays, musical concerts, films, dance performances, receptions, exhibitions, seminars, or meetings; and

(iv) The center is located in a county having a population of more than nine hundred thousand (900,000), according to the 2010 federal census or any subsequent federal census;

(21)(A) "Hotel" (Motel) means every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, in which twenty (20) or more rooms are used for

the sleeping accommodations of such guests and having one (1) or more public dining rooms, with adequate and sanitary kitchen and a seating capacity of at least fifty (50) at tables, where meals are regularly served to such guests, such sleeping accommodations and dining rooms being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation. Motels meeting the qualifications set out herein for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a restaurant on their premises and the holder of such franchise shall be included in the definition of "hotel" hereunder; and property contiguous to a hotel, except property located in any county having a population of not less than seventy-seven thousand seven hundred fifty (77,750) nor more than seventy-seven thousand seven hundred ninety (77,790), according to the 1980 federal census or any subsequent federal census, which is owned by the same entity as the hotel and operated by the same entity as the hotel, which property either serves travelers and guests other than as a separate commercial establishment or is operated as a major entertainment complex serving in excess of one million (1,000,000) persons per year;

(B) "Hotel" also means and includes all entities previously described wherein sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which thirty (30) or more suites are used for sleeping accommodations of such guests and having eating facilities in each room for four (4) or more persons with an adequate and sanitary central kitchen from which meals are regularly prepared and served to guests in such suites. For the purpose of this section, "suite" is defined as a guest facility within a hotel where living, sleeping and dining are regularly provided for such guests within the individual units provided for guests. No such hotel or suite as defined in this subdivision (21)(B) shall be authorized to charge for, inhibit or otherwise interfere in any way with the rights of its guests or tenants to carry into rooms or suites rented by them their own bottles, packages or other containers of alcoholic beverages and/or to use or serve them to themselves, their own visitors or guests within the individual units rented or leased by them;

(C) "Hotel" also includes facilities owned and operated by an individual or event-management organization which plans and coordinates all phases of any function for retreats by groups of persons having similar backgrounds or purposes, and which offers meeting and banquet facilities, dining services, recreation and leisure activities in facilities which include a dining inn with seating capacity of three hundred (300), and a complex which includes meeting and banquet facilities with a seating capacity of two hundred (200), overnight accommodations for at least forty (40), and a fifty (50) acre tract of land with picnic accommodations for at least four thousand (4,000), and a facility with seating capacity of four hundred (400). The scope of any license authorized by this subdivision (21)(C) includes picnic service on the grounds of the complex owned and operated by the licensee;

(D) "Hotel" also includes a residence hotel located in the central business district of any municipality having a population of more than three hundred thousand (300,000), according to the 1990 federal census or any subsequent federal census and having a common smoking room and lobby area;

(E)(i) "Hotel" also includes a bed and breakfast establishment as defined in § 68-14-502, where meals are regularly served to guests and where sleeping accommodations and dining facilities being conducted in the same buildings or structures used in connection therewith are on the same premises and are part of the hotel operation. The premises upon which such establishment is located shall be within the boundaries of a clearly defined arts district which is owned and operated by the same entity and having a common courtyard which is contiguous to all buildings and structures on the premises. The dining facilities, including beverages, may be served from an adequate and sanitary central kitchen and storage facility;

(ii) This subdivision (21)(E) applies in any municipality having a population in excess of one hundred fifty thousand (150,000), according to the 1990 federal census or any subsequent federal census;

(F)(i) "Hotel" also includes a bed and breakfast establishment as defined in § 68-14-502, where meals are regularly served to guests and where sleeping accommodations and dining facilities being conducted in the same buildings or structures used in connection therewith are on the same premises and are part of the hotel operation. In such establishment there must be two (2) rooms for sleeping accommodations and a seating capacity of twenty-five (25) people at tables. The premises upon which such establishment is located shall have a business conference center;

(ii) Subdivision (21)(F)(i) applies in any county having a population of not less than eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census;

(iii) "Hotel" also includes a facility located in a county which contains a population of not less than eighty-five thousand nine hundred (85,900) nor more than eighty-six thousand one hundred sixty (86,160), according to the 1990 federal census or any subsequent census, which facility contains the following characteristics:

(a) Contains at least forty (40) rooms for guest sleeping accommodations offered for adequate pay to travelers and guests;

(b) Contains at least three (3) separate dining rooms with adequate sanitary kitchen facilities, either common or separate, where meals are regularly served to guests;

(c) Is located on real property of at least one thousand fifty (1,050) acres, notwithstanding that such real property is not contiguous and may be divided by a public or private road;

(d) Contains a swimming pool, hiking trails, and biking trails for use by registered guests;

(e) Has access to the Double Branch Creek and tributaries, notwithstanding that such creek and tributaries are not contiguous and

may be divided by a public or private road;

(f) Has at least two thousand seven hundred sixteen (2,716) acres of land that has been placed in conservation easement;

(g) Provides a full service spa for use by registered guests of the facility;

(h) Any such hotel whose facilities are located on the premises of an area meeting the definition of a hotel under this subdivision (21)(F)(iii) may exercise the privileges authorized under this chapter anywhere within that area, and, in addition, may exercise the privilege authorized under this chapter on any location identified to the commission and held out to the public as part of such hotel property irrespective of the actual owner of the location, where the hotel is authorized by written contract or lease to provide hotel or resort services by the owner of such location; and

(i) Notwithstanding this title or any rule to the contrary, a hotel under this subdivision (21)(F)(iii) shall be able to:

(1) Hold a manufacturer's license under § 57-3-202 or a non-manufacturer nonresident seller's permit under § 57-3-602(c) or both, and such license or permit may be for facilities on or off the hotel premises;

(2) Offer tastings, with or without charge, and sell sealed bottles in a tasting room or a gift shop on the hotel premises of product manufactured pursuant to the license or permit in subdivision (21)(F)(iii)(*i*)(*1*), as long as such tastings and sealed bottles are offered only to guests of the hotel, as defined in this section, and private owners of homes on the hotel property and are not offered anywhere except in the tasting room and the gift shops;

(3) Sell beer and alcoholic beverages by the drink for on-premises consumption anywhere on the hotel premises, except for the tasting room and the gift shops; and

(4) Only sell at retail or provide samples of product that it has obtained from a wholesaler licensed under § 57-3-203, and such wholesaler shall remit all taxes imposed under §§ 57-3-302 and 57-3-501, which shall be collected from the hotel based upon its retail sales, and § 57-6-201. For products acquired from a wholesaler by a hotel under this subdivision (21)(F)(iii) that are manufactured by the hotel, the wholesaler may permit the hotel to deliver its products to the location on its premises where such retail sales and samples will be effected, provided the wholesaler permitting such direct shipment must include the amounts delivered in its inventory and depletions for purposes of tax collections;

(j) A hotel under this subdivision (21)(F)(iii) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(G)(i) "Hotel" also includes a facility that possesses the following characteristics:

(a) Was built in 1917;

(b) Is listed on the National Register of Historic Places;

(c) Has at least twelve (12) rooms for guest sleeping accommodations with at least one (1) room being handicap accessible;

(d) Has a dining area that seats at least one hundred sixty (160) people;

(e) Has a music and entertainment venue that is at least two thousand nine hundred square feet (2,900 sq. ft.);

(f) Has a two-acre meadow suitable for wedding ceremonies and other events; and

(g) Is located in any county having a population of not less than thirty-seven thousand five hundred (37,500) nor more than thirty-seven thousand six hundred (37,600), according to the 2000 federal census or any subsequent federal census.

(ii) A hotel under this subdivision (21)(G) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(H)(i) "Hotel" also means a facility that possesses all of the following characteristics:

(a) Offers to the public:

(1) At least thirty (30) rooms for the sleeping accommodations of guests for adequate pay; and

(2) A dining room;

(b) Is owned by and located on the campus of a private institution of higher education located on at least ten thousand (10,000) acres; and

(c) Is located in any county having a population of not less than thirty-nine thousand two hundred (39,200) nor more than thirty-nine thousand three hundred (39,300), according to the 2000 federal census or any subsequent federal census;

(ii) A hotel under this subdivision (21)(H) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(I)(i) "Hotel" also includes a facility that possesses the following characteristics:

(a) Is located in a building on which construction began prior to 1940;

(b) Is located approximately twenty-two (22) miles south of Interstate 40 on U.S. Highway 412;

(c) Is fronted on the north side by U.S. Highway 412 and is less than one (1) mile from a scenic river as defined in title 11, chapter 13;

(d) Has at least twelve (12) rooms for guest sleeping accommodations;

(e) Has a separate room for conferences or meetings;

(f) Has at least a forty-seat dining area that has been approved by the local health department and that serves meals at least four (4) days a week, with exceptions of closures for private groups or events, seasonal closures, vacations, and periods of general maintenance or remodeling by the owners;

(g) Does not discriminate against any patron on the basis of age,

gender, race, religion, or national origin; and

(h) Is located in any county having a population of not less than seven thousand nine hundred one (7,901) nor more than eight thousand (8,000), according to the 2010 federal census or any subsequent federal census;

(ii) A hotel under this subdivision (21)(I) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(22) "Limited service restaurant" means a facility possessing each of the following characteristics:

(A) Is a public place which has a seating capacity for at least forty (40) patrons and that is kept, used, maintained, advertised and held out to the public as a place where during regular hours of operation:

(i) Alcoholic beverages, beer or wine are served to patrons;

(ii) A menu of prepared food is made available to patrons;

(iii) The gross revenue from the sale of prepared food is fifty percent (50%) or less than the gross revenue from the sale of alcoholic beverages; provided, however, that gross revenue of more than fifty percent (50%) from the sale of prepared food shall not prevent a facility from receiving a "limited service restaurant" license or subject such facility to a fine from the commission for having gross revenue of more than fifty percent (50%) from the sale of prepared food. For purposes of determining the gross revenue from the sale of prepared food, chips, popcorn, pretzels, peanuts and similar snack items shall not be included in gross revenue from the sale of prepared food sold;

(iv) The facility affirmatively establishes, to the satisfaction of the commission, that it has complied and will comply with the requirements of § 57-4-204;

(v) The facility provides adequate security during the regular hours of operation; and

(vi) Sleeping accommodations are not provided;

(B) Is located within the jurisdictional boundaries of a political subdivision which has authorized the sale of alcoholic beverages for consumption on the premises as provided in § 57-4-103; and

(C) Is located in an area which is properly zoned for facilities authorized to sell alcoholic beverages for consumption on the premises;

(23)(A) "Motor speedway" means a motor sports facility that possesses the following characteristics:

(i) Is located in a county having a population of not less than sixty-seven thousand six hundred (67,600) nor more than sixty-seven thousand nine hundred (67,900), according to the 1990 federal census or any subsequent federal census, and at least one (1) municipality located in such county has adopted liquor by the drink;

(ii) Contains a 1.33 mile superspeedway;

(iii) Is situated on a site of at least five hundred (500) acres; and

(iv) Has a seating capacity of fifty thousand (50,000) with the capability to expand to one hundred fifty thousand (150,000) grandstand seats and one hundred (100) luxury skyboxes;

(B) "Motor speedway" also means a motor sports facility that possesses the following characteristics:

(i) Is located in a county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;

(ii) Contains a three-quarter-mile oval track with a seating capacity of sixteen thousand (16,000) seats; and

(iii) Contains a one-quarter-mile drag strip with a seating capacity of fifteen thousand (15,000) seats;

(24)(A) "Museum" means a building or institution serving as a repository of natural, scientific or literary curiosities or works of art for public display and further possesses the following characteristics:

(i) The museum is at least fifty (50) years old; and

(ii) The museum is located in a county having a population in excess of seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census;

(B) "Museum" also means an "art museum" which is a building or institution serving as a repository of works of art for public display and further possesses the following characteristics:

(i) The art museum is owned and operated by a bona fide charitable or nonprofit organization which has been in existence for at least twenty-five (25) years;

(ii) The art museum is located in a building which contains not less than fifty thousand square feet (50,000 sq. ft.); and

(iii) The art museum is located in a former world's fair site; and

(C) "Museum" also means a building or institution serving as a repository or exhibition facility for works of art for public display and further possesses the following characteristics:

(i) The museum is owned and operated by a bona fide charitable or nonprofit organization;

(ii) The museum is located in a building which contains not less than one hundred thousand square feet (100,000 sq. ft.);

(iii) The museum is located in a building that previously served as a United States postal service facility; and

(iv) The museum is located in a municipality or county having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(D) "Museum" also means a building or institution serving as a tribute to soul music and which houses a music academy and further possesses the following characteristics:

(i) The museum and music academy is located on the original site of a recording studio; and

(ii) The museum and music academy is located in a county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;

(E) "Museum" also means an "art museum" which is a building or institution serving as a repository of works of art for public display and further possesses the following characteristics:

(i) The art museum is owned and operated by a bona fide charitable or nonprofit organization;

(ii) The museum has been in existence for at least fifty (50) years;

(iii) The museum focuses on American art from the colonial period to the present day;

(iv) The museum is located in a historical mansion and a sleek contemporary building on the bluffs overlooking the Tennessee River; and

(v) The museum does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) The museum is located in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(F) "Museum" also means a building or institution dedicated to the public display, preservation, and promotion of fine metalwork and further possesses the following characteristics:

(i) The museum opened to the public in 1979;

(ii) The museum is located on at least three (3) acres overlooking the Mississippi River;

(iii) The museum features a fully operational blacksmith shop and sand-casting foundry;

(iv) The museum is owned and operated by a bona fide charitable or nonprofit organization; and

(v) The museum is located in a county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;

(25) "Paddlewheel steamboat company" means a company that operates one (1) or more paddlewheel steamboats for hire in interstate commerce upon navigable waterways and is licensed by the United States coast guard to carry not less than one hundred (100) passengers on a single vessel, with adequate facilities and equipment for serving regular meals, on regular schedules, or charter trips, while moving through or docked in any county of the state; provided, however, that no paddlewheel steamboat company licensed pursuant to this chapter shall sell any type of alcoholic beverage or beer while such paddlewheel steamboat is docked within the boundaries of any local government which has not approved the sale of alcoholic beverages pursuant to § 57-4-103;

(26) "Passenger train" includes any passenger train operating in interstate commerce under a certificate of public convenience and necessity issued by the appropriate federal or state agency, with adequate facilities and equipment for serving passengers, on regular or special schedules, or charter trips, while moving through any county of the state, but not while any such passenger train is stopped in a county or municipality that has not legalized such sales;

(27) A "premier type tourist resort" means:

(A) A commercially operated recreational facility possessing each of the following characteristics:

(i) Ownership and operation by a profit type corporation having a capitalization of not less than ten million dollars ($10,000,000);

(ii) Situated in a geographical area wholly controlled by the operator of the facility and having not less than six thousand (6,000) acres of contiguous land, not less than five thousand (5,000) acres of which is to be developed and maintained in accordance with sound ecological and environmental practices, such requirement to be subject at all times to the oversight and approval of the department of environment and conservation, which shall not less often than once a year make a written report thereof to the commission. Satisfactory compliance with this requirement and certification thereof by the department to the commission shall be a condition precedent to the issuance or renewal of the permit provided for in § 57-4-201;

(iii) Continuous maintenance of lodging accommodations consisting of not less than two hundred (200) hotel or motel rooms in a building or buildings designed for such purpose;

(iv) Continuous maintenance of facilities for the accommodation of conventions of not less than four hundred (400) persons;

(v) Maintenance within the recreational area of at least one (1) of the following types of sporting facilities:

(a) A golf course of at least eighteen (18) holes;

(b) A lake covering not less than one hundred (100) acres adapted for boating and fishing;

(c) A ski slope;

(vi) Maintenance, in addition to one (1) or more of the facilities enumerated in subdivision (27)(A)(v), of two (2) or more of the following types of recreational facilities:

(a) Area for camping;

(b) Tennis courts;

(c) Swimming pool;

(d) Trails for hiking and/or horseback riding;

(e) Equestrian center;

(vii) A twenty-four-hour per day security force approved as to adequacy by the commission;

(B) A hotel, motel or restaurant located within a municipality having a population of one thousand (1,000) or more persons, according to the federal census of 1970 or any subsequent federal census in which at least fifty percent (50%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, and tourist courts accommodations, providing the voters of the municipality have heretofore by referendum pursuant to § 57-4-103, approved the sale of alcoholic beverages for consumption on the premises, and such referendum shall be authorized, notwithstanding the population requirements set forth in § 57-3-106. For purposes of implementation of this subdivision (27)(B), the sale of alcoholic beverages shall be limited to hotels, restaurants, and clubs as defined in this section. To ensure proper control and development of the tourist industry of such municipality, any applicant for a license under this

subdivision (27)(B) shall first obtain approval from a majority of the legislative body of the municipality, which may adopt rules and regulations governing its procedure and setting forth limitations and restrictions including, but not limited to, the number and location of licensed establishments and requiring approval by the legislative body as to the good moral character of each applicant for a license;

(C)(i) A commercially operated recreational facility containing all of the following characteristics:

(a) Ownership and operation by a profit type corporation or partnership;

(b) Situated in a geographical area controlled by the operator of the facility, having not less than two thousand five hundred (2,500) acres of land;

(c) Continuous maintenance of lodging accommodations consisting of not less than one hundred (100) hotel or motel rooms in a building or buildings designed for such purpose;

(d) The maintenance of a ski slope with necessary lifts or tows for use during skiing season;

(e) Continuous maintenance of restaurant facilities for seating at tables of not less than two hundred (200) persons, with adequate kitchen facilities; and

(f) Located within a municipality with a population of not less than one thousand fifty (1,050) nor more than one thousand seventy-five (1,075), according to the 1980 or any subsequent census;

(ii) To ensure proper control and development of the tourist industry of such municipality, any applicant for a license under this subdivision (27)(C) shall first obtain approval from a majority of the legislative body of the municipality, which may adopt rules and regulations governing its procedure and setting forth limitations and restrictions including, but not limited to, the number and location of licensed establishments and requiring approval by the legislative body as to the good moral character of each applicant for a license;

(D) A commercially operated facility possessing each of the following characteristics:

(i) Situated in a geographical area controlled by the operator of the facility, having not less than one hundred seventy-nine (179) acres of land;

(ii) A public golf course of at least eighteen (18) holes with a practice green and irrigation system;

(iii) Such facility has a club house with at least five thousand square feet (5,000 sq. ft.) that can accommodate up to two hundred fifty (250) guests for events;

(iv) Has separate meeting rooms for multiple events;

(v) Has a cart barn on the property that holds no less than sixty (60) golf carts;

(vi) Such facility has a maintenance shop with at least seven thousand square feet (7,000 sq. ft.);

(vii) Is located inside of:

(a) A black bear habitat community; and

(b) A conservation community;

(viii) Surrounded by over one hundred (100) rental cabins;

(ix) At least fifty percent (50%) of the property boundaries border a national park;

(x) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(xi) Is located in any county having a population of not less than one hundred twenty-three thousand one (123,001) nor more than one hundred twenty-three thousand one hundred (123,100) according to the 2010 federal census or any subsequent federal census;

(E) A commercially operated recreational facility containing all of the following characteristics:

(i) Ownership and operation by a for-profit corporation or partnership;

(ii) Located in a geographic area managed by the operator of the facility, containing a minimum area of one hundred fifty (150) contiguous acres;

(iii) Continuous maintenance of lodging accommodations of not less than fifty (50) rooms available for guests, tourists or for business meetings located in a building or buildings designed for accommodations or business meetings;

(iv) Maintenance of lakeside marina facilities, a golf course of not less than eighteen (18) holes, and riding trails and stables on the premises;

(v) Located within a municipality with a population of not less than six thousand three hundred seventy-five (6,375) nor more than six thousand four hundred (6,400), according to the 1980 or any subsequent federal census; and

(vi) Whose manager shall have been specifically approved by a majority of the legislative body of the municipality in which such licensee is located as being an individual of good moral character;

(F) A facility, whether open to the public or limited to members and guests of the development on which it is located, owned or operated, pursuant to a license by a homeowners or residential association, which facility is kept, used and maintained as a place where meals are served and where meals are actually and regularly served, with adequate and sanitary kitchen facilities and which facility meets all of the following characteristics:

(i) The facility must be located in a county having a population of not less than forty-seven thousand (47,000) nor more than forty-seven thousand five hundred (47,500), according to the 1990 federal census or any subsequent federal census;

(ii) The facility must be located on the premises of a planned, gated residential development of at least eighty (80) acres with at least nine thousand (9,000) lineal feet of water frontage on an established and designated navigable waterway; and

(iii) The facility must be located within the limits of a development which contains a marina and tennis court facilities;

(G) A club, either for profit or not for profit, which has been in existence for two (2) consecutive years during which time it has maintained a membership of at least three thousand (3,000) members and which maintains club facilities on or adjacent to property offering recreational services available to its members, which services shall include one (1) or more of the following:

(i) Golf course with at least eighteen (18) holes;

(ii) Tennis courts;

(iii) Marina facilities with a minimum of four hundred (400) slips.

Any such club whose club facilities are located on the premises of an area meeting the definition of a "premier type tourist resort" under this section may exercise its privileges authorized under this chapter anywhere within such area;

(H) A commercially operated recreational facility, whether open to the public or limited to members and guests of an association or of the development on which it is located, owned and operated by an association or corporation and in connection with an eighteen-hole golf course, which facility is kept, used and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all of the following characteristics:

(i) The facility must be located in a county having a population of not less than thirty-four thousand seven hundred thirty (34,730) nor more than thirty-four thousand seven hundred sixty (34,760), according to the 1990 federal census or any subsequent federal census;

(ii) The facility must be located in a development containing no less than four hundred twenty (420) acres and no more than four hundred fifty (450) acres;

(iii) The facility must be located within limits of a development which contains an eighteen-hole golf course;

(iv) The facility must have no less than five thousand (5,000) enclosed square feet (5,000 sq. ft.);

(v) The facility must be located no less than one-half (½) mile from the right-of-way of an interstate highway; and

(vi) The facility must be located within the limits of a development which contains a lake of not less than twenty-eight (28) acres which is entirely within the limits of the development;

(I) A commercially operated recreational facility possessing each of the following characteristics:

(i)*(a)* Ownership and development by a for profit corporation;

(b) Situated in a geographic area controlled by such entity and having not less than twenty-five (25) contiguous acres of land which is divided by a four-lane highway;

(c) Designed to contain picnic facilities, museum buildings, retail sales areas, retail food dispensing outlets, and restaurant areas;

(d) Maintenance of a limited access area containing a former residence, a swimming pool, a handball court, and stables where no pedestrian access is allowed and all guests entering must be carried by a motor vehicle; and

(e) Location within a county having a population of not less than seven hundred seventy thousand (770,000), according to the 1990 federal census or any subsequent federal census;

(ii) "Premier type tourist resort," as defined in this subdivision (27)(I), shall be authorized to sell or serve alcoholic beverages on the premises of such resort only at special functions, wherein attendance is limited to invited guests or groups and not to the general public;

(J) An entity operating a commercial golf related recreational facility, whether open to the public or limited to members and guests of an association or owners and guests of a development upon or adjacent to which the facility is located, which entity or facility meets all of the following criteria:

(i) The facility is located in a county having a population of not less than thirty-four thousand seven hundred thirty (34,730) nor more than thirty-four thousand eight hundred (34,800), according to the 1990 federal census or any subsequent federal census;

(ii) The facility is operated in conjunction with an eighteen (18) hole golf course;

(iii) The facility is kept, used and maintained as a place where meals are actually and regularly served with such adequate and sanitary kitchen facilities as might be needed to meet the reasonable requirements of its patrons, members, or guests;

(iv) The entity does not discriminate or limit the use of the facilities solely on the basis of race, creed, sex, or national origin, and has provided to the commission a written certification of its policy;

(v) Such facility has enclosed clubhouse space of at least five thousand square feet (5,000 sq. ft.);

(vi) Such facility is located no less than seven (7) miles and no more than eight (8) miles from an interchange of an interstate highway; and

(vii) Such facility is located on a geographic area, owned or operated by the entity, which area contains not less than one hundred fifty-five (155) acres nor more than one hundred seventy (170) acres;

(K) A commercially operated recreational facility whether open to the public or limited to members and guests of an association or of the development on which it is located, owned and operated by an association or corporation and in connection with an eighteen-hole golf course, which facility is regularly kept, used and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all the following characteristics:

(i) The facility must be located in or adjacent to a real estate development containing no less than one thousand one hundred (1,100) acres and no more than two thousand (2,000) acres;

(ii) The facility must have no less than nine thousand (9,000) enclosed square feet;

(iii) The facility must be located within the limits of a development which is contiguous to a water reservoir operated and maintained by the United States army corps of engineers during 1998 or any subsequent years; and

(iv) Maintenance within the recreational area of the following types of recreational facilities:

(a) Golf course of at least eighteen (18) holes;

(b) Swimming pool;

(c) Tennis court; and

(d) Walking trails;

(L) A resort containing all of the following characteristics:

(i) Has a restaurant, with a current overall seating capacity of two hundred eighty (280), including outside dining service, and which serves over seventy-five thousand (75,000) patrons per year;

(ii) Is located immediately adjacent to the Cherokee National Forest, the only national forest in Tennessee and the Cherohala Skyway, one of only twenty (20) highways in the country designated as a national scenic byway;

(iii) Is located along the scenic Tellico River, a tributary of the Little Tennessee River;

(iv) Currently operates nine (9) cabins, a river walk, and an open-air chapel and pavilion;

(v) After a proposed expansion will include at least thirty (30) cottages, a full-service health and wellness spa, a championship golf course, racquet club, adventure club for canoeing, kayaking, hiking, biking and other outdoor activities, an equestrian club, conference facilities, a hunt and fish club, crafts and education, and history tours; and

(vi) Is located within a county having a population of not less than thirty-eight thousand nine hundred (38,900) nor greater than thirty-nine thousand (39,000), according to the 2000 federal census or any subsequent federal census;

(M) A commercially or privately operated recreational facility containing all of the following characteristics:

(i) The facility is located within a platted housing subdivision of not less than four hundred (400) acres nor greater than five hundred twenty-five (525) acres;

(ii) The facility is located on or adjacent to an eighteen-hole golf course located within the development;

(iii) The facility is located within a development that operates a recreational swimming pool of at least sixty thousand gallons (60,000 gals.);

(iv) The facility operates and maintains tennis courts for use by homeowners, visitors, tourists, or guests;

(v) The facility operates a clubhouse for the use of homeowners, visitors, tourists, or guests of at least five thousand total square feet (5,000 sq. ft.) and the clubhouse houses a restaurant with seating at tables for at least forty (40) people and such restaurant has adequate kitchen facilities;

(vi) The facility is located within a county with a population of not less than thirty-nine thousand fifty (39,050) nor more than thirty-nine thousand one hundred fifty (39,150), according to the 2000 federal

census or any subsequent federal census; and

(vii) The facility shall have been providing some or all of the described recreational services for a continuous period of at least four (4) years at the time of licensing;

(N) A commercially operated recreational facility, located adjacent to a navigational river which contains all of the following characteristics:

(i) Such facility has direct access to a navigable waterway;

(ii) Such facility contains a minimum of two hundred (200) slips for boats;

(iii) Such facility provides boat fuel, boat rental and repair;

(iv) Such facility is located upon or adjacent to a public park or preserve, which park is at least one hundred (100) acres in size, and which park contains a swimming pool, tennis courts and at least a nine (9) hole golf course; and

(v) Such facility is located within a county with a population of at least three hundred eighty thousand (380,000), according to the 2000 federal census or any subsequent federal census;

(O) An entity granted a franchise for the operation of a restaurant or food and beverage services on the premises of the premier type tourist resort, and for such purposes a premier type tourist resort shall have the privilege of granting such franchises;

(P) A commercially operated facility which contains all of the following characteristics:

(i) Such facility was licensed as a health club on December 31, 2015;

(ii) Such facility only allows members and their invited guests;

(iii) Such facility has two (2) swimming pools with one pool having at least fifteen thousand square feet (15,000 sq. ft.) of water surface;

(iv) Such facility provides volleyball courts, a basketball court and a recreation area with food service;

(v) Such facility is located within fifteen (15) miles of an airport;

(vi) Such facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Such facility is located within a county having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eight-two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census;

(Q) A commercially operated facility which contains all of the following characteristics:

(i) Such facility is located no more than three and one-half (3 ½) miles from the right of way of Interstate 40 and fronting on State Highway 92 and has a minimum of eight (8) acres of lake front property with a minimum of five thousand eight hundred feet (5,800′) of shore line;

(ii) Such facility has at least eighty (80) boat slips and forty-eight (48) dry slips, a boat launching ramp, a full service restaurant seating at least one hundred seventy-five (175) people inside with outside patio dining, a ships store offering boat supplies and gasoline, and an outdoor pavilion;

(iii) Such facility provides accommodations consisting of at least twenty (20) lakeside hotel/motel units in a building or buildings de-

signed for such purposes;

(iv) Such facility is located within a county having a population of not less than forty-four thousand (44,000) nor more than forty-four thousand nine hundred (44,900), according to the 2000 federal census or any subsequent federal census; and

(v) Such facility shall also include any commercial boat for charter that departs from any such facility if the boat is licensed by the United States Coast Guard to carry not less than fifty (50) passengers on a single vessel and has adequate facilities and equipment for serving regular meals, on regular schedules, or charter trips, while moving through or docked in any county of the state;

(R) A commercially operated facility which at a minimum contains all of the following characteristics:

(i) Such facility is located within one (1) mile of the right-of-way of Interstate 40 and in an area zoned by the municipality as B-3; and

(ii) Such facility is located within a county having a population of not less than forty-four thousand (44,000) nor more than forty-four thousand nine hundred (44,900), according to the 2000 federal census or any subsequent federal census;

(S) A commercially operated facility which contains all of the following characteristics:

(i) Such facility is located no more than one-half (½) mile from the right of way of Interstate 75 and accessible to State Highway 68;

(ii) Such facility has at least nine thousand square feet (9,000 sq. ft.) of conference space;

(iii) Such facility provides accommodations consisting of at least one hundred twenty-five (125) hotel or motel rooms in a building or buildings designed for such purposes;

(iv) Such facility provides recreational facilities including an indoor swimming pool;

(v) Such facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) Such facility is located within a county having a population of not less than thirty-eight thousand nine hundred (38,900) nor more than thirty-nine thousand (39,000), according to the 2000 federal census or any subsequent federal census;

(T) A nine-hundred-sixty-acre peninsula gated community located on a lake with ten (10) miles of shoreline, and which facility contains all of the following characteristics:

(i) Has an eighteen-hole golf course and tennis courts;

(ii) Has a club house, restaurant, lounge, fitness center, and swimming pool;

(iii) Maintains a community garden, community and neighborhood docks and a boat ramp;

(iv) Has an equestrian facility with extensive riding trails;

(v) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) Is located in two (2) counties one (1) county having a population of not less than thirty-eight thousand nine hundred (38,900) nor more

than thirty-nine thousand (39,000) and the other county having a population of not less than thirty-nine thousand fifty (39,050), nor more than thirty-nine thousand one hundred fifty (39,150), both according to the 2000 federal census or any subsequent federal census;

(U) A facility which contains all the following characteristics:

(i) Has resort lodge condominiums, homes and vacation cottages;

(ii) Has an eighteen hole golf course and tennis courts with a pro shop;

(iii) Has a swimming pool;

(iv) Has rock climbing, hiking and biking trails;

(v) Has a full service spa;

(vi) Has banquet and dining services and a business service center;

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(viii) Is located in a county having a population of not less than thirty-nine thousand eight hundred (39,800) nor more than thirty nine thousand eight hundred seventy-five (39,875), according to the 2000 federal census or any subsequent federal census;

(V) It is lawful for any establishment located in a premier type tourist resort as defined in § 67-6-103(a)(3)(B)(iii) which is licensed to serve beer to also serve wine to be consumed on the premises, subject to the further provisions of this chapter other than § 57-4-103;

(W) It is lawful for any establishment located in a municipality which:

(i) Has an approved Tourist Development Zone as set forth in title 7, chapter 88;

(ii) Has a AA minor league baseball team; and

(iii) Is located in a county with an amusement park, a ski resort, and a national park,

which is licensed to serve beer to also serve wine to be consumed on the premises, subject to the further provisions of this chapter other than § 57-4-103;

(X) A commercially operated recreational facility, located adjacent to a navigable river, that has all of the following characteristics:

(i) Contains at least one hundred (100) boating slips available for lease, rental, or use by guests;

(ii) Has one (1) or more restaurant facilities with a combined seating capacity of at least two hundred (200);

(iii) Has a lodge with at least fifteen (15) units available for transient lodging; and

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(Y) A commercially operated facility that has all of the following characteristics:

(i) Is located no more than six (6) miles from Interstate 40 at exit 427, and on both sides of a county highway known as Harrison Ferry Road. The facility contains a minimum of one hundred forty-three (143) acres, and includes a minimum of twenty-two (22) acres of land zoned commercial for future development at the corner of Back Nine Drive and

Mountain View Lane;

(ii) Has an eighteen-hole golf course, two (2) practice putting greens, a practice chipping green and a practice area for golf instruction. The facility also contains a large swimming pool, a boat ramp into Douglas Lake, and two (2) tennis courts;

(iii) Has a clubhouse with a fully-equipped pro shop, a full-service restaurant seating at least one hundred fifty (150) persons inside, with an outside patio that seats at least seventy (70) persons;

(iv) Provides accommodations, consisting of at least twelve (12) hotel/motel units and at least nine (9) villa units; and

(v) Is located within an incorporated municipality having a population of less than five hundred (500), according to the 2000 federal census or any subsequent federal census, within a county having a population of not less than forty-four thousand two hundred (44,200) nor more than forty-four thousand three hundred (44,300), according to the 2000 federal census or any subsequent federal census; and

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(Z) An inn that has all of the following characteristics:

(i) Contains at least twelve (12) transient guest rooms in the main house;

(ii) Has a separate meeting lodge and facility that also houses at least four (4) new French country transient suites;

(iii) Has at least two (2) kitchens on the premises and offers at least two (2) meals daily;

(iv) Has an open-air, outdoor, sylvan chapel suitable for the accommodation of wedding ceremonies;

(v) Provides entertainment in the form of cooking demonstrations, storytelling and dulcimer playing;

(vi) Is listed in Distinguished Inns of North America, 16th Edition, by Select Registry; and

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(AA) A commercially operated facility that has all of the following characteristics:

(i) Is a full service colonial mansion located on an eighty-one-acre estate;

(ii) Contains no fewer than eight (8) transient rooms and seventeen (17) bathrooms;

(iii) Contains a dining room with capacity for fifty (50) persons that serves at least two (2) meals daily;

(iv) Has a heated swimming pool, a fitness center, a sauna, a tennis court and a billiard room;

(v) Has a system of hiking and walking trails;

(vi) Is listed in Distinguished Inns of North America, 16th Edition, by Select Registry; and

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(BB) A facility that has nine (9) acres of shoreline development on Watts Bar Lake and that has all of the following characteristics:

(i) Has one- to three-bedroom cottages;

(ii) Has a marina with two hundred fifty (250) slips, both wet and dry;

(iii) Has a restaurant and lounge;

(iv) Has a swimming pool;

(v) Has rental boats;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located in a county having a population of not less than twenty-eight thousand three hundred fifty (28,350) nor more than twenty-eight thousand four hundred fifty (28,450), according to the 2000 federal census or any subsequent federal census;

(CC) A development that has all the following characteristics:

(i) Has a well established marina with boat rentals, gasoline, guide services, etc., and a resort operating for more than fifty (50) years;

(ii) Includes more than two hundred (200) acres on Watts Bar Lake;

(iii) Has forty (40) cottages rented on a daily or weekly basis;

(iv) Has a restaurant;

(v) Has walking and nature trails;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located in a county having a population of not less than twenty-eight thousand three hundred fifty (28,350) nor more than twenty-eight thousand four hundred fifty (28,450), according to the 2000 federal census or any subsequent federal census;

(DD) Any facility located in a municipality that has a civil war battlefield:

(i) Of which more than one thousand four hundred (1,400) acres have been designated in the National Register of Historic Places;

(ii) For which a management contract has been entered into between the municipality and the Tennessee historical commission;

(iii) Which has a self-guided driving tour;

(iv) For which long-range plans include walking trails, interpretive signs and a visitor's center with a museum;

(v) At which, every two (2) years, a living history and reenactment of the battle fought in December, 1862 is presented;

(vi) That is famous for the southern general's order to his troops to "Charge them both ways"; and

(vii) Is located in a county having a population of not less than twenty-five thousand four hundred fifty (25,450) nor more than twenty-five thousand five hundred fifty (25,550), according to the 2000 federal census or any subsequent federal census;

(EE) A facility that has at least fourteen (14) acres located on a lake of at least eight thousand (8,000) acres and that has the following characteristics:

(i) Contains at least three hundred and fifty (350) boat slips;

(ii) Contains a dry storage facility;

(iii) Provides boat rentals;

(iv) Contains a marine store;

(v) Contains a full service restaurant with seating for at least one hundred fifty (150) people, as well as a private banquet facility;

(vi) Has motel rooms and cabins for rent;

(vii) Contains a swimming pool;

(viii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(ix) Is located in a county having a population of not less than fifty-six thousand seven hundred (56,700) nor more than fifty-six thousand eight hundred (56,800), according to the 2000 federal census or any subsequent federal census;

(FF) A facility that has three hundred eighty-five (385) acres of development on J. Percy Priest Lake and that has all the following characteristics:

(i) Has a water park;

(ii) Has a marina with more than three hundred twenty (320) slips;

(iii) Has a recreational vehicle (RV) campground;

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(v) Is located in a county having a population of not less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(GG) A development that has all of the following characteristics:

(i) Has a well established marina with boat slip rentals, gasoline, etc.;

(ii) Includes three hundred eighty-five (385) acres on J. Percy Priest Lake;

(iii) Has a water park;

(iv) Has a recreational vehicle (RV) campground;

(v) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) Is located in a county having a population of not less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(HH) A fully staffed overnight accommodations facility that:

(i) Is open twenty-four (24) hours a day, located on thirty-four (34) acres of land, that offers at least one (1) meal per day, along with hiking, a fitness facility, an event lawn, and a retail store;

(ii) Has twenty (20) one- and two-bedroom cabins that have kitchens or kitchenettes, wood-burning fireplaces, hot tubs, and high-speed internet access;

(iii) Has a one thousand five hundred square foot (1,500 sq. ft.) meeting facility with a capacity of up to one hundred twenty-five (125) persons, and a restaurant with a capacity of up to eighty-five (85) persons, both of which have high-speed internet access; and

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(II) A commercially operated facility containing all of the following

characteristics:

(i) The facility has a marina with approximately one hundred sixty-six (166) wet slips and approximately one hundred thirty-three (133) dry storage units;

(ii) The facility is located within a lake-resort, gated residential development of at least one thousand two hundred (1,200) acres having in excess of four hundred fifty (450) single family homes and condominium units;

(iii) The facility is located on a lake that has over eight hundred thirty-four (834) miles of shore line;

(iv) The facility will have a restaurant with a seating capacity of at least fifty (50) people, serving at least two (2) meals a day;

(v) The facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) The facility is located within a county having a population of not less than thirty-nine thousand eight hundred (39,800) nor more than thirty-nine thousand eight hundred seventy-five (39,875), according to the 2000 federal census or any subsequent federal census;

(JJ)(i) A commercially-operated facility containing all of the following characteristics:

(a) The facility has on its premises a marina that has at least two hundred fifty (250) covered or uncovered wet slips and at least seventy-five (75) dry rack slips;

(b) The facility has on its premises property leased or available for lease to a boating, yachting or water-based recreational club;

(c) The facility has on its premises a restaurant, providing food service to the public or for private events, with seating in the restaurant for at least fifty (50) persons at tables, whether or not the seating is inside or on a deck or patio adjacent to the restaurant;

(d) The facility has the capacity to serve as a home berth location for a commercial vessel for hire or for public cruises of at least seventy-five feet (75′) in length;

(ii) When used in this subdivision (27)(JJ), the "facility" under subdivision (27)(JJ)(i) shall include any location within the property designated by the licensee;

(iii) A facility under this subdivision (27)(JJ) shall also include any passenger sternwheel paddleboat, licensed by the United States coast guard, with rated passenger capacity of not less than one hundred (100) passengers and which paddleboat shall be at least seventy-five feet (75′) in length, which may use the marina facilities as described in subdivision (27)(JJ)(i) for its home or principal secondary port dock. The authority conferred under this subdivision (27)(JJ)(iii), authorizing the sale or distribution of alcoholic beverages, including beer, on any qualified sternwheel paddleboat shall extend only so long as the paddleboat is located at the marina facility described in subdivision (27)(JJ)(i) or is within one hundred (100) miles of the marina facility;

(iv) For purposes of obtaining a license under this subdivision (27)(JJ), the commission shall be authorized to issue a license solely to

the owner or operator of a sternwheel paddleboat, meeting the qualifications of subdivision (27)(JJ)(iii), whether or not the facility described in subdivision (27)(JJ)(i) receives a license under this chapter;

(KK) A commercially operated restaurant located within a county having a population of not less than thirty-nine thousand seven hundred fifty (39,750) nor more than forty thousand (40,000) and also located within the corporate limits of a municipality having a population of not less than seven thousand seven hundred fifty (7,750) nor more than eight thousand (8,000), according to the 2000 federal census or any subsequent federal census, and in addition to satisfying the requirements of subdivision (30)(A), also meets the following additional requirements:

(i) The facility is in a structure of not less than six thousand square feet (6,000 sq. ft.);

(ii) The facility has seating at tables, for at least two hundred (200) persons; and

(iii) The facility serves at least two (2) meals a day, five (5) days a week, with the exception of holidays, vacations and periods of redecorating;

(LL) A commercially operated recreational facility containing all of the following characteristics:

(i) Owning and operating one (1) or more golf courses, that include practice putting greens, chipping greens and a driving range;

(ii) Operating a clubhouse facility, of at least eight thousand square feet (8,000 sq. ft.), containing a commercial quality kitchen and seating for at least one hundred (100) persons at tables;

(iii) Operating a private clubhouse of at least five thousand square feet (5,000 sq. ft.), with seating at tables for at least eighty (80) persons, and which private clubhouse contains a full service kitchen;

(iv) Located on a minimum of one hundred thirty-seven (137) acres; and

(v) Located within a county through which a major interstate passes, supports a Tennessee board of regents university of approximately nine thousand three hundred (9,300) students for the 2006 academic year and whose sports teams are nicknamed the golden eagles;

(MM) A facility operated either commercially or on a nonprofit basis as a club containing all of the following characteristics:

(i) A clubhouse having not less than approximately five thousand eight hundred square feet (5,800 sq. ft.);

(ii) An eighteen-hole golf course for use by its members and their guests;

(iii) A restaurant with a suitable kitchen, dining facilities and equipment serving two (2) meals daily and open six (6) days a week;

(iv) Is part of a planned unit development;

(v) Has at least one hundred (100) members regularly paying dues;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three

hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(NN) It is lawful for a facility providing full service dining to serve wine to be consumed on the premises, subject to the further provisions of this chapter, other than § 57-4-103, that contains the following characteristics:

(i) The facility provides seating at tables for not less than one hundred twenty-five (125) persons and is located on approximately three (3) acres;

(ii) The dining area is at least four thousand eight hundred square feet (4,800 sq. ft.);

(iii) The facility provides seating, on a deck or a patio, for at least forty (40) persons, weather permitting, which deck or patio is in close proximity to a river or waterway; and

(iv) The facility is located in a county with a population of not less than twenty-three thousand (23,000) nor more than twenty-three thousand two hundred (23,200), according to the 2000 federal census or any subsequent federal census;

(OO) A commercially operated facility containing all of the following characteristics:

(i) The facility has overnight accommodations for at least thirty-two (32) people in at least twelve (12) private guest rooms with en-suite bathrooms;

(ii) The facility has a main dining room which seats at least thirty-two (32) people;

(iii) The facility has meeting and conference space, including at least two (2) dedicated conference rooms;

(iv) The facility has a historic water-operated grist mill;

(v) The facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(PP) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with at least four hundred thirty-five (435) wet slips;

(ii) The facility has a minimum of four hundred twelve (412) paved single car parking spaces and in addition at least thirty (30) car/trailer paved parking spaces;

(iii) The facility has a restaurant with inside seating for at least seventy-eight (78) persons and patio dining for at least fifty-four (54) persons;

(iv) The facility is located within one great circle mile of Tennessee highway 56;

(v) The facility is located on a lake with at least eighteen thousand (18,000) acres of water and at least three hundred forty-two (342) miles

of shore line; and

(vi) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(QQ)(i) A commercially operated facility containing all of the following characteristics:

(a) Owning and operating a golf course that is open to the public, that includes practice putting and chipping greens and a driving range;

(b) Operating a clubhouse facility of approximately four thousand square feet (4,000 sq. ft.), containing a commercial quality kitchen and seating for at least eighty-three (83) persons inside at tables;

(c) The facility is located at the intersection of State Highway 55 and Pete Sain Road;

(d) The facility does not discriminate against any patron on the basis of gender, race, religion or national origin; and

(e) The facility is located within a county having a population of not less than forty-eight thousand (48,000) nor more than forty-eight thousand one hundred (48,100), according to the 2000 federal census or any subsequent census;

(ii) The rights of any facility licensed under this subdivision (27)(QQ) as to activities permitted under this chapter may be held by the entity that owns the facility, the entity that leases the facility, or an entity operating a restaurant pursuant to a written contract with the entity that owns or leases the facility;

(RR) A commercially operated recreational facility on at least ninety (90) acres of land that borders the Cherokee National Forest that offers lodging, recreation and restaurant packages to patrons containing all of the following characteristics:

(i) A rustic lodge with at least five (5) private overnight rooms that all possess a king-sized bed, mini-refrigerator, coffee maker, microwave, television, sitting area and private full bathroom, all of which have views of the mountains and are situated in a lodge with a shared great room and hot tub;

(ii) At least ten (10) cabins for overnight stays that sleep multiple persons, some of which are company-owned and some of which are privately-owned but rented by the company, and include the following amenities: television, outdoor hot tub on private deck, heat and air conditioning, gas grill, cookware, fireplace, linens and towels and large and small appliances including washer/dryer and all common kitchen appliances;

(iii) Riding stables with at least twenty-two (22) stalls for both horses owned by the resort and for overnight lease for or by guests, on-site guided trail rides provided by the owners, a horse arena with a bathroom, mountain biking, hiking, fishing including an on-site stocked pond and swimming in the guest swimming pool;

(iv) A dining restaurant that possesses a kitchen and is currently permitted to serve beer that is attached to a larger multi-purpose hall

that hosts banquets, dining, dancing, music, live bands and other types of entertainment, all of which are connected to two (2) bars and at least one (1) private room and includes dining upstairs and downstairs and multiple outdoor seating decks, all of which possess a combined seating of at least two hundred (200) persons, that serves at least nine (9) meals on a weekly basis, with the exceptions of closures for private groups that include the year-round hosting of reunions, weddings and corporate workshops and seasonal closures, vacations, general maintenance and remodeling by the owners;

(v) A building that contains an administrative office and a general store complete with all sorts of merchandise for use on and off of the premises of the resort, a building that contains a tack store that sells all sorts of horse-related merchandise and a building that contains a game room;

(vi) An outdoor pavilion that possesses a grill and in which other outdoor cooking devices may be used and that is used to serve meals outdoors in combination with foods prepared in the kitchen;

(vii) A gazebo used for outdoor weddings;

(viii) When used in this subdivision (27)(RR), "facility" includes any location within the property designated by the licensee;

(ix) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(x) Is located within a county having a population of not less than thirty-three thousand five hundred twenty-five (33,525) nor more than thirty-three thousand six hundred (33,600), according to the 2000 federal census or any subsequent federal census;

(SS)(i) A commercially operated recreational facility, whether open to the public or limited to members and guests of a corporation, limited liability company, association or of the development in which it is located, owned and operated by a corporation, limited liability company or association, having all of the following characteristics:

(a) The facility must be located in or adjacent to a residential real estate development containing no less than one thousand (1,000) acres and no more than two thousand (2,000) acres, inclusive of the facility;

(b) The facility must have at least three (3) permanent structures, open to the public or to members and their guests, with the largest structure having at least thirty thousand square feet (30,000 sq. ft.) of enclosed space;

(c) The closest boundary of the real estate development in which the facility is located must be located no more than two thousand feet (2,000′) from the right-of-way of Interstate 840 and must be directly adjacent to Arno Road;

(d) The facility must maintain the following types of recreational amenities:

(1) A golf course having at least eighteen (18) holes;

(2) At least one (1) swimming pool;

(3) At least one (1) tennis court; and

(4) A fitness facility;

(e) The facility must have at least one (1) room or rooms that are regularly kept, used and maintained as a place where meals are regularly served, with adequate and sanitary kitchen facilities and seating at tables for at least seventy-five (75) persons;

(f) The facility must be located in a county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census; and

(g) The facility must not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(ii) The premises of any facility licensed under this subdivision (27)(SS) means any or all of the property that constitutes the facility, including swimming pools, tennis courts, golf courses, paths and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(TT)(i) A commercially operated recreational facility which contains each of the following characteristics:

(a) Is located within a county with a population of not less than seventeen thousand (17,000) nor greater than eighteen thousand (18,000), according to the 2010 federal census or any subsequent federal census;

(b) Has located on its premises, stables for the temporary or permanent stabling of horses with a capacity of at least two hundred twenty (220) horses;

(c) Consists of property of at least ten thousand (10,000) acres, contiguous and noncontiguous;

(d) Has located upon its premises trails and horseback riding, wagon trails, campsites with electrical service, bathhouses and a pavilion for cookouts; and

(e) Has a restaurant facility for the preparation and serving of food and beverages to guests of the facility located at the facility;

(ii) The rights of the facility as to activities permitted under this chapter may be held by the entity which owns the facility, the entity which leases the facility, or an entity operating the restaurant pursuant to a written contract with the entity which owns or leases the facility;

(iii) The facility may be a contiguous parcel of property or may be noncontiguous; provided, that any part of the facility which is noncontiguous to any other part of the facility is separated only by a roadway or street; and

(iv) The entity excising the rights of the facility shall be authorized to engage in the activities permitted under this chapter anywhere on the premises of the facility as disclosed to the commission;

(UU) A privately owned facility possessing each of the following characteristics:

(i) Is located on at least twenty (20) acres;

(ii) Has a restaurant facility with at least one thousand two hundred square feet (1,200 sq. ft.) that seats at least one hundred (100) patrons at tables located both inside and outside the facility;

(iii) Has a marina with at least one hundred (100) slips and that provides house boat rentals of at least four (4) house boats;

(iv) Has at least four (4) cabins, seven (7) camping slots and at least three (3) RV slots;

(v) Has a boat repair shop and a store that carries boating and skiing type items;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located within any county having a population of not less than seventeen thousand eight hundred (17,800) nor more than seventeen thousand eight hundred seventy-five (17,875), according to the 2000 federal census or any subsequent federal census;

(VV) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with at least two hundred forty (240) wet slips;

(ii) The facility has a minimum of nine (9) housing units for rent containing nineteen (19) bedrooms;

(iii) The facility has a campground with twelve (12) sites containing electric and sewer hookups;

(iv) The facility has a minimum of one hundred forty-seven (147) paved single car parking spaces;

(v) The facility has a restaurant with inside seating for at least twenty-eight (28) persons and patio dining for at least forty (40) persons;

(vi) The facility has an outdoor pavilion which seats one hundred fifty (150) persons;

(vii) The facility is located on Jefferson Road, approximately six and one tenth (6.1) miles from the intersection with Highway 288/Keltonburg Road and thirteen (13) miles from Highway 70;

(viii) The facility is located on a lake with at least eighteen thousand (18,000) acres of water and at least three hundred forty-two (342) miles of shore line; and

(ix) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(WW) A commercially operated facility containing all of the following characteristics:

(i) The facility has a minimum of eighty seven (87) parking spaces;

(ii) The facility has a restaurant open year-round with inside seating for at least sixty (60) persons and outside seating for at least one hundred nineteen (119) persons;

(iii) The facility is located on Highway 96 less than one (1) mile from Center Hill Lake; and

(iv) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than

seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(XX) A commercially operated facility containing all of the following characteristics:

(i) The facility has a minimum of eighty five (85) parking spaces;

(ii) The facility has a restaurant open year-round at least six (6) days a week with inside seating for at least one hundred (100) persons and outside seating for at least one hundred twenty (120) persons;

(iii) The facility is located on Highway 70 less than three (3) miles from Center Hill Lake; and

(iv) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(YY) A commercially operated facility containing all of the following characteristics:

(i) The facility owns and operates an eighteen (18) hole golf course that is open to the public, which includes putting greens and a driving range;

(ii) The facility operates a clubhouse facility of approximately five thousand (5,000) square feet, with seating at tables for at least eighty (80) persons and which clubhouse contains a full-service kitchen;

(iii) The facility operates a swimming pool;

(iv) The facility is located on a minimum of one hundred thirty-three (133) acres;

(v) The facility is located adjacent to old Highway 45W and is situated within a county having a population of not less than forty-eight thousand one hundred twenty-five (48,125) nor more than forty-eight thousand two hundred (48,200), according to the 2000 federal census or any subsequent federal census; and

(vi) The facility does not discriminate against any patron on the basis of gender, race, religion or national origin;

(ZZ) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with at least five hundred thirty (530) wet slips;

(ii) The facility has a minimum of two hundred fifty (250) paved single car parking spaces;

(iii) The facility has a restaurant with inside seating for at least eighty (80) persons and outside seating for at least sixty (60) persons;

(iv) The facility is located on a lake with at least eighteen thousand (18,000) acres of water and at least three hundred forty-two (342) miles of shore line; and

(v) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(AAA) A commercially operated facility containing all of the following

characteristics:

(i) The facility includes a one hundred forty-seven thousand square foot (147,000 sq. ft.) boat and RV showroom and service center with retail sales of all types of camping and boating equipment as well as a boat and RV parts department;

(ii) The facility has a two hundred fifty (250) seat full service restaurant;

(iii) The facility has a two hundred fifty (250) site campground with two (2) swimming pools, cabins and a lodge;

(iv) The facility is a travel center with a store, pizzeria, delicatessen, fuel center;

(v) The facility has an arcade;

(vi) The facility is located at 2475 Westel Road; and

(vii) The facility is located within a county having a population of not less than forty-six thousand eight hundred (46,800) nor more than forty-six thousand nine hundred (46,900), according to the 2000 federal census or any subsequent federal census;

(BBB) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with at least one hundred one (101) wet slips;

(ii) The facility has a minimum of sixty (60) paved single car parking spaces;

(iii) The facility has a restaurant with adequate and sanitary kitchen facilities with inside seating for at least forty (40) persons and outside seating for at least one hundred fifty (150) persons and is kept, used and maintained as a place where meals are served and where meals are actually and regularly served when the facility is opened for business; and

(iv) The facility is located within a county having a population of not less than thirty-one thousand one hundred (31,100) nor more than thirty-one thousand two hundred (31,200), according to the 2000 federal census or any subsequent federal census;

(CCC) A commercially operated facility which contains all of the following characteristics:

(i) Is a bed and breakfast homestay, as defined in § 68-14-502(1)(B), that opened in 2008;

(ii) Has at least two (2) rooms available for overnight guests;

(iii) Is able to prepare on-site custom meals for up to thirty (30) persons;

(iv) Offers cooking classes; and

(v) Is located within any county having a population of not less than one hundred eighty-two thousand (182,000) nor more than one hundred eighty-two thousand one hundred (182,100), according to the 2000 federal census or any subsequent federal census;

(DDD) A commercially operated recreational facility whether open to the public or limited to members and guests of an association or of the development on which it is located, owned, and operated by an association

or corporation and in connection with an eighteen-hole golf course which facility is regularly kept, used, and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all the following characteristics:

(i) The facility must have a clubhouse with no less than six thousand enclosed square feet (6,000 sq. ft.);

(ii) The facility must be located within the limits of a development that is within five hundred yards (500 yds.) of a water reservoir operated and maintained by the United States Army corps of engineers during 1998 or any subsequent years;

(iii) The facility must be located within at least three (3) miles of an airport with lighted runway of at least three thousand feet (3000′) in length;

(iv) Maintenance within the recreational area of the following types of recreational facilities:

(a) Golf course of at least eighteen (18) holes;

(b) Swimming pool; and

(c) Tennis court; and

(v) The facility is located within a county having a population of not less than twenty-nine thousand eight hundred (29,800) nor more than twenty-nine thousand nine hundred (29,900), according to the 2000 federal census or any subsequent federal census;

(EEE) A privately-owned resort and recreational facility possessing each of the following characteristics:

(i) Has at least ninety-five (95) acres located approximately five (5) miles south of Interstate 40 on Tennessee State Highway 13;

(ii) Is fronted on the west side by Tennessee State Highway 13 and bordered on the south side by a scenic river as defined in title 11, chapter 13, part 1;

(iii) Has at least four (4) cabins;

(iv) Has at least thirty (30) recreational vehicle pads and sites with full electrical, water and sewer hookups;

(v) Has at least a forty-seat restaurant which has been approved by the local health department that has an approved beer permit and has food available, with exceptions of closures for private groups or events, seasonal closures, vacations, general maintenance and remodeling by the owners;

(vi) When used in this subdivision (27)(EEE), the "facility" shall include any location within the property designated by the licensee;

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(viii) Is located within any county having a population of not less than seven thousand six hundred (7,600) nor more than seven thousand seven hundred (7,700), according to the 2000 census or any subsequent federal census; and the legislative body of such county adopts a resolution endorsing such resort and recreational facility as a premier type tourist resort as defined in this subdivision (27);

(FFF) A commercially operated facility containing all of the following

characteristics:

(i) Has a restaurant serving an upscale menu featuring lobster tail, crab legs and fresh cut steaks;

(ii) Is located on a lake by a marina;

(iii) Has a boat dock within walking distance of the restaurant;

(iv) Has indoor seating for approximately one hundred thirty (130) diners and outdoor dining on the patio with seating for approximately one hundred eighty (180);

(v) Offers live entertainment on the patio at its Tiki Bar; and

(vi) Is located in any county having a population of not less than forty-four thousand two hundred (44,200) nor more than forty-four thousand three hundred (44,300), according to the 2000 federal census or any subsequent federal census;

(GGG) A privately-owned resort and recreational facility possessing each of the following characteristics:

(i) Has a dock with marina which has at least one hundred seventy (170) boat slips which is located on or near the four hundred eighty-two (482) mile marker on the Tennessee River;

(ii) Has an outside gazebo which is used for various functions;

(iii) Has a restaurant with a dining room of at least four thousand two hundred square feet (4,200 sq. ft.), which seats at least two hundred (200) persons both indoors and outdoors, including an outdoor balcony; and which serves meals at least four (4) days on a weekly basis including Sunday brunch, with exceptions of closures for private groups or events; and seasonal closures, vacations, general maintenance and remodeling by the owners;

(iv) When used in this subdivision (27)(GGG), the "facility" shall include any location within the property designated by the licensee; and

(v) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(HHH) A commercially operated facility containing all of the following characteristics:

(i) Regularly serves meals at tables and continuously maintains adequate kitchen facilities;

(ii) Has indoor seating for approximately one hundred twenty (120) diners and outdoor seating for approximately one hundred thirty (130);

(iii) Is located on the banks of the Cumberland River;

(iv) Has a transient boat dock within walking distance of the restaurant;

(v) Specializes in serving catfish and is often referred to as "the Catfish Place under the bridge"; and

(vi) Is located in any county having a population of not less than thirty-nine thousand one hundred (39,100) nor more than thirty-nine thousand two hundred (39,200), according to the 2010 federal census or any subsequent federal census;

(III) A bed and breakfast possessing each of the following characteristics:

(i) The house is approximately ten thousand square feet (10,000 sq. ft.) and has rooms for approximately twelve (12) guests to stay

overnight;

(ii) Has a smaller upper level patio and a larger, lower level patio;

(iii) Has a main dining room on the first floor which can accommodate approximately seventy (70) guests. The main dining room is one (1) large room with floor to ceiling windows providing one hundred eighty degrees (180°) of lakefront viewing;

(iv) Has accommodations for an additional forty (40) guests for outside dining;

(v) Is located in the Long Branch portion of Dale Hollow Lake;

(vi) The property on which the bed and breakfast is situated has space for weddings, family reunions and other large gatherings on the large outside portion of the property; and

(vii) Is located in any county having a population of less than seven thousand eight hundred fifty-one (7,851) nor more than seven thousand eight hundred sixty-five (7,865), according to the 2010 federal census or any subsequent federal census;

(JJJ) A hotel possessing all of the following characteristics:

(i) Contains at least twenty five (25) rooms for the sleeping accommodations of guests;

(ii) Is registered as a national historic landmark;

(iii) Is located within a central business improvement district; and

(iv) Is located in any county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census;

(KKK) A commercially operated recreational facility possessing each of the following characteristics:

(i) Is located at least two hundred feet (200′) from a natural lake that is located in or near a state park, which has waterfowl hunting and fishing is available year round;

(ii) Has a restaurant which has:

(a) A beer license;

(b) A commercial kitchen; and

(c) Seating for at least seventy-five (75); and

(iii) Has a boat ramp and boat dock;

(LLL) A commercially operated facility containing all of the following characteristics:

(i) The facility has a restaurant open year-round with inside seating for at least seventy-five (75) persons;

(ii) The facility has a minimum of eighty-five (85) parking spaces;

(iii) The facility is located on Highway 70 less than three (3) miles from Center Hill Lake; and

(iv) The facility is located within a county having a population of not less than eighteen thousand seven hundred (18,700) nor more than eighteen thousand seven hundred fifty (18,750), according to the 2010 federal census or any subsequent federal census;

(MMM)(i) A commercially operated recreational facility possessing all of the following characteristics:

(a) A golf course of at least eighteen (18) holes;

(b) Wooded trails for horseback riding;

(c) A fully stocked fishing pond;

(d) At least three (3) tennis courts;

(e) Located in any county having a population of not less than one hundred eighty-three thousand one hundred (183,100) nor more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census; and

(f) Is located no more than two thousand feet (2,000′) from the right-of-way of Interstate 840 and must be directly adjacent to Arno Road;

(ii) The premises of any facility licensed under this subdivision (27)(MMM) means any or all of the property that constitutes the facility, including swimming pools, tennis courts, golf courses, paths, and road crossings. A license shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(NNN) A commercially owned marina containing all of the following characteristics:

(i) Operates as a marina on approximately forty-six (46) acres of land;

(ii) Has a restaurant with at least one hundred ten (110) seats;

(iii) Has approximately two hundred (200) boat slips;

(iv) Has seven (7) cabins; and

(v) Is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-four thousand six hundred (44,600), according to the 2010 federal census or any subsequent federal census;

(OOO) A commercially operated facility containing all of the following characteristics:

(i) Operates as a hunting lodge on approximately four hundred (400) acres of land;

(ii) Has adequate kitchen facilities and a dining area within the hunting lodge with seating of at least fifty (50) at tables;

(iii) Has capacity to sleep at least thirty (30) guests within the main hunting lodge and at least twenty (20) guests in a cabin located on the property; and

(iv) Is located off I-40 at Exit 311 in any county having a population of not less than fifty-six thousand (56,000) nor more than fifty-six thousand one hundred (56,100), according to the 2010 federal census or any subsequent federal census;

(PPP) A commercially operated facility open to the public for persons twenty-one (21) years of age or older that has all of the following characteristics:

(i) Is located within three (3) miles of Dale Hollow Lake;

(ii) Has a kitchen that serves food to customers;

(iii) Is licensed to sell beer;

(iv) Is located in an A frame building built in 1968;

(v) Has a deck of more than one thousand square feet (1,000 sq. ft);

and

(vi) Is located in any county having a population of not less than seven thousand eight hundred fifty-one (7,851) nor more than seven thousand eight hundred sixty-five (7,865), according to the 2010 federal census or any subsequent federal census;

(QQQ)(i) A commercially operated resort, restaurant, marina and recreational facility possessing all of the following characteristics:

(a) Is located on at least five (5) acres but no more than seven (7) acres at day marker four (4) as designated by the Tennessee Valley authority on Norris Lake;

(b) Has a marina with at least one hundred forty-five (145) boat slips, most of which are contracted for use on an annual basis, but also includes use for drive-ups;

(c) Rents pontoon, ski, and house boats;

(d) Has a marina store;

(e) Has a restaurant with a full service kitchen with combined seating indoors and outdoors for at least one hundred (100) patrons;

(f) Has a restaurant that serves at least twelve (12) meals on a weekly basis with exceptions of closures for private groups or events, seasonal reasons, vacations, general maintenance and remodeling by the owners;

(g) Has special events and weddings inside and outside;

(h) Has at least fifty-five (55) condominiums with at least thirty (30) of the condominiums available for rental on a nightly or weekly basis;

(i) Has a restaurant that possesses a beer permit for on and off-premises consumption;

(j) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(k) Is located in a county having a population of not less than forty thousand seven hundred (40,700) nor more than forty thousand eight hundred (40,800), according to the 2010 federal census or any subsequent federal census;

(ii) The facility licensed pursuant to this subdivision (27)(QQQ) shall make food available at any time when alcoholic beverages are being served.

(iii) When used in this subdivision (27)(QQQ), "facility" means any location within the property as designated by the licensee;

(RRR) A commercially operated marina, restaurant, and recreational facility possessing all of the following characteristics:

(i) Is located on at least thirty-two (32) acres of land located off Old Awalt Road;

(ii) Has a marina with at least two hundred fifty (250) wet slips located on Tims Ford Lake;

(iii) Has a restaurant with a dining room to accommodate at least two hundred (200) patrons;

(iv) Includes at least five (5) rental cabins and a motel with at least (5) rental units on its grounds; and

(v) Has a fuel dock with a stationary tank that holds at least six thousand gallons (6,000 gals.) of fuel;

(SSS) A commercially operated mountaintop resort and recreational facility possessing all of the following characteristics:

(i) Is located on at least one thousand two hundred (1,200) acres at an altitude of between two thousand five hundred feet (2,500′) and three thousand feet (3,000′);

(ii) Provides nightly lodging in at least eleven (11) furnished suites with balconies, all of which are located in at least two (2) buildings;

(iii) Has a restaurant with a full service kitchen with combined seating indoors and outdoors for at least one hundred (100) patrons; and which serves at least twelve (12) meals on a weekly basis with exceptions of closures for private groups or events; and seasonal closures, vacations, general maintenance and remodeling by the owners; provided, however, that food shall be made available at any time when alcoholic beverages are being served; and such restaurant shall already possess a beer permit for on-premises consumption;

(iv) Hosts special on-site events including weddings, receptions, reunions, corporate meetings, and club or group gatherings;

(v) Has a wooden walkway through chimney rock formations;

(vi) Has a heliport with at least two (2) landing pads;

(vii) When used in this subdivision (27)(SSS), "facility" includes any location within the property as designated by the licensee;

(viii) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(ix) Is located in a county having a population of not less than forty thousand seven hundred (40,700) nor more than forty thousand eight hundred (40,800), according to the 2010 census or any subsequent federal census;

(TTT) A commercially owned marina, resort, and recreational facility possessing each of the following characteristics:

(i) Includes a full service marina that includes at least one hundred thirty (130) boat slips with the capacity to have three hundred seventy-five (375) covered boat slips ranging in size from twenty-four feet (24′) to thirty feet (30′) deep; and which is located opposite the one hundred and thirty-three and one-third R (133.3R) mile marker on the Clinch River on Norris Lake;

(ii) Has a public pump station;

(iii) Has a restaurant with at least one hundred (100) seats both indoors and outdoors which serves at least six (6) meals on a weekly basis, with exceptions of closures for private groups or events, and seasonal closures, vacations, general maintenance, and remodeling by the owners;

(iv) Has a ship store;

(v) Has gas docks;

(vi) Has a marina campground with at least twenty (20) campsites with electric, water, and wastewater connections;

(vii) Does not discriminate against any patron on the basis of age,

gender, race, religion, or national origin; and

(viii) The facility is located within a county having a population of not less than thirty-two thousand two hundred (32,200) nor more than thirty-two thousand three hundred (32,300), according to the 2010 federal census or any subsequent federal census. When used in this subdivision (27)(TTT), "facility" includes any location within the property designated by the licensee;

(UUU)(i) A commercially or privately operated facility containing all of the following characteristics:

(a) Is located on Tellico Lake, containing a minimum area of six hundred fifty (650) contiguous acres;

(b) Has an information and sales center;

(c) Has public access walking trails;

(d) Has a championship golf course of at least eighteen (18) holes;

(e) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(f) Is located within any county having a population of not less than forty-eight thousand five hundred (48,500) nor more than forty-eight thousand six hundred (48,600), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (27)(UUU) shall mean any or all of the property that constitutes the facility, including, but not limited to, clubhouses, restaurants, gift and pro shops, marinas, swimming pools, tennis courts, golf courses, and paths and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises and such drawing may be amended by the licensee filing a new drawing;

(VVV) A commercially operated private tennis club possessing all of the following characteristics:

(i) Is located on at least thirteen (13) acres of land located off Racquet Club Way;

(ii) Has at least ten (10) indoor hard tennis courts located indoors;

(iii) Has at least five (5) hard tennis courts and at least twelve (12) clay tennis courts located outdoors; and

(iv) Includes a five thousand square foot (5,000 sq. ft.) club house on its grounds;

(WWW) A commercially operated recreational facility possessing all of the following characteristics:

(i) Has a banquet room that seats not less than seventy-five (75) people;

(ii) Has a semi-private golf course of at least eighteen (18) holes;

(iii) Has a club house, restaurant that serves food, and swimming pool;

(iv) Is located not less than one (1) mile from Interstate 40 and is adjacent to Golf Course Road;

(v) Is located in a county having a population of not less than thirty-five thousand six hundred (35,600) nor more than thirty-five thousand seven hundred (35,700), according to the 2010 federal census or any subsequent federal census;

(XXX) A commercially owned marina, resort and recreational facility possessing each of the following characteristics:

(i) Includes a full service marina that includes at least one hundred (100) covered boat slips, at least thirty-five (35) mooring line buoys, at least five (5) floating home rentals, and offers for rental at least fourteen (14) watercraft of various types including ski-boats, single and double deck pontoons, jet skis, and standup paddle boats; and which is located at Big Creek Mile eight.zero L (8.0L), Whitman Hollow Branch Norris Reservoir;

(ii) Has a restaurant with at least seventy-five (75) seats combined indoors and outdoors, which serves at least ten (10) meals on a weekly basis, with exceptions of closures for private groups or events, and seasonal closures, vacations, general maintenance and remodeling by the owners; provided, however, that food shall be made available at any time that alcoholic beverages are being served;

(iii) Has at least seven (7) campsites;

(iv) Has at least two (2) vacation rental homes;

(v) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(vi) Is located in any county having a population of not less than forty thousand seven hundred (40,700) nor more than forty thousand eight hundred (40,800), according to the 2010 federal census or any subsequent federal census;

(YYY) A commercially owned marina, resort and recreational facility possessing each of the following characteristics:

(i) Has a full service marina that includes at least three hundred (300) boat slips and is located on Norris Lake;

(ii) Has a restaurant with at least seventy-two (72) indoor seats and seventy-two (72) outdoor seats, which serves at least ten (10) meals on a weekly basis, with exceptions of closures for private groups or events, and seasonal closures, vacations, general maintenance and remodeling by the owners; provided, however, that food shall be made available at any time that alcoholic beverages are being served;

(iii) Has a motel with at least twenty-four (24) rooms;

(iv) Has at least two (2) vacation rental cabins and at least twenty-three (23) recreational vehicle (RV) slots;

(v) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(vi) Is located in any county having a population of not less than forty thousand seven hundred (40,700) nor more than forty thousand eight hundred (40,800), according to the 2010 federal census or any subsequent federal census;

(ZZZ) A commercially operated facility possessing each of the following characteristics:

(i) Has adequate kitchen facilities and a dining area within the facility that has a seating capacity of at least fifty (50);

(ii) Is within four (4) miles of Douglas Lake;

(iii) Is located on the corner of Greenhill Road and Hwy 25-70 within

one (1) mile of I-40 at Exit 415; and

(iv) Is located in a county having a population of not less than fifty-one thousand four hundred (51,400) nor more than fifty-one thousand five hundred (51,500), according to the 2010 federal census or any subsequent federal census;

(AAAA)(i) A privately owned resort and recreational facility possessing each of the following characteristics:

(a) Is located off U.S. Highway 421 in any county having a population of not less than eighteen thousand two hundred (18,200) nor more than eighteen thousand three hundred (18,300), according to the 2010 federal census or any subsequent federal census;

(b) Has a semi-private golf course of at least eighteen (18) holes;

(c) Has at least twenty (20) accommodation units;

(d) Has at least two (2) tennis courts;

(e) Has at least one (1) swimming pool;

(f) Has a restaurant that seats at least fifty (50) people; and

(g) Has a meeting facility;

(ii) The premises of any resort and recreational facility licensed under this subdivision (27)(AAAA) shall mean any or all of the property that constitutes the resort and facility, including, but not limited to, clubhouses, restaurants, gift and pro shops, swimming pools, tennis courts, golf courses, and paths and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, and such drawing may be amended by the licensee filing a new drawing;

(BBBB) It is lawful for any establishment located in a municipality having a population of not less than six hundred (600) nor more than six hundred ten (610), according to the 2010 federal census or any subsequent federal census, which is located in a county having a population of not less than two hundred sixty-two thousand six hundred (262,600) nor more than two hundred sixty-two thousand seven hundred (262,700), according to the 2010 federal census or any subsequent federal census, that is licensed to serve beer to also serve alcoholic beverages and wine to be consumed on the premises, subject to the further provisions of this chapter other than § 57-4-103;

(CCCC) A commercially owned marina, resort, and recreational facility possessing each of the following characteristics:

(i) Includes a full-service marina that includes at least one hundred fifty (150) boat slips and is located on Norris Lake;

(ii) Has at least eight (8) campsites;

(iii) Has a restaurant with at least eighty (80) seats, which serves at least ten (10) meals on a weekly basis, with exceptions of closures for private groups or events, and seasonal closures, vacations, general maintenance, and remodeling by the owners; provided, however, that food shall be made available at any time that alcoholic beverages are being served;

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(v) Is located in any county having a population of not less than forty thousand seven hundred (40,700) nor more than forty thousand eight hundred (40,800), according to the 2010 federal census or any subsequent federal census;

(DDDD) A commercially operated facility possessing each of the following characteristics:

(i) Is located within a one thousand foot (1,000′) radius from the intersection of U.S. Highway 41A and University Avenue/Lake O'Donnell Road on property owned by a private institution of higher education, the campus of which is at least ten thousand (10,000) acres;

(ii) Is located in any county having a population of not less than forty-one thousand (41,000) nor more than forty-one thousand one hundred (41,100), according to the 2010 federal census or any subsequent federal census;

(iii) Has prepared and served hot food for on-site dining with indoor seating for at least twenty-five (25) persons for at least twenty-four (24) months; and

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(EEEE) An entity that is authorized by the department of environment and conservation to operate a restaurant or other food and beverage service on the premises of a state park;

(FFFF) It is lawful for any establishment located in a municipality having a population of not less than four hundred ninety (490) nor more than four hundred ninety-nine (499), according to the 2010 federal census or any subsequent federal census, which is located in a county having a population of not less than thirty-two thousand two hundred (32,200) nor more than thirty-two thousand three hundred (32,300), according to the 2010 federal census or any subsequent federal census, that is licensed to serve beer to also serve alcoholic beverages and wine to be consumed on the premises, subject to the further provisions of this chapter other than § 57-4-103;

(GGGG) A commercially operated facility possessing each of the following characteristics:

(i) Is located in any county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(ii) Regularly serves meals;

(iii) Contains an adequate and sanitary kitchen;

(iv) Has seating for not less than forty (40) people at tables;

(v) Is located on floatation devices on the Cumberland river in close proximity to a marina; and

(vi) May be seasonally closed;

(HHHH) A commercially operated recreational facility possessing each of the following characteristics:

(i) Is located:

(a) On at least two thousand five hundred (2,500) acres, approximately eight (8) miles from an interstate highway; and

(b) Along a waterway that flows into a river, a portion of which has been designated as a scenic river;

(ii) Has at least twelve (12) cabins and at least three hundred fifty (350) campsites;

(iii) Has a motor cross trail or trails and a horseback riding trail or trails;

(iv) Has a restaurant with seating for at least one hundred (100);

(v) Has a one thousand six hundred square foot (1,600 sq. ft.) stage at an amphitheater that seats approximately two thousand five hundred (2,500); and

(vi) Has least five (5) hotels or motels located near the facility;

(IIII) A commercially operated facility containing all of the following characteristics:

(i) Is located:

(a) On at least twenty-two (22) acres;

(b) Within a county having a population of not less than seventy-two thousand three hundred (72,300) nor more than seventy-two thousand four hundred (72,400), according to the 2010 federal census or any subsequent federal census; and

(c) At least two (2) miles north of the city of Cookeville, Tennessee;

(ii) Has been an LLC corporation since 2013;

(iii) Accommodates overnight lodging for up to fourteen (14) guests;

(iv) Is available for special events for up to five hundred (500) guests, including, but not limited to, weddings, receptions, corporate events, fundraisers, and reunions; and

(v) Has on-site parking for up to two hundred fifty (250) vehicles;

(JJJJ) A commercially operated facility possessing all of the following characteristics:

(i) Is located in a home built in 1892;

(ii) Is located on 3rd Avenue South;

(iii) Has eight thousand square feet (8,000 sq. ft.) of space including an outside courtyard;

(iv) Hosts on-site special events including weddings, receptions, and group gatherings;

(v) Has an adequate and sanitary kitchen; and

(vi) Is located in any county having a population of not less than one hundred eighty-three thousand one hundred (183,100) nor more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census;

(KKKK) A commercially operated facility containing all of the following characteristics:

(i) The facility is located on at least two hundred fifty (250) acres;

(ii) The facility provides camping and additional overnight accommodations;

(iii) The facility serves at least one (1) meal per day in a dining room that seats at least fifty (50) persons; and

(iv) The facility must be located within a commercial district which contains a former state penitentiary that was in operation for a minimum of fifty (50) years;

(LLLL) A commercially operated facility possessing each of the following characteristics:

(i) Has been in operation as an inn since November 3, 2002;

(ii) Is located within one-half (½) mile of a city park;

(iii) Has a total of eight (8) guest rooms in the main house;

(iv) Has a separate cottage that also houses at least one (1) transient suite, as well as workspaces and storage;

(v) Has at least one (1) kitchen on the premises and offers at least one (1) meal daily;

(vi) Has an open-air, outdoor patio suitable for the accommodation of wedding ceremonies and other events;

(vii) Has been designated historically significant by a county historical commission; and

(viii) Is located in any county having a population of more than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(MMMM) A commercially operated facility possessing all of the following characteristics:

(i) Has a restaurant open at least six (6) days a week with seating at tables for at least one hundred (100) persons;

(ii) Is licensed to sell beer;

(iii) Is located in a structure of not less than six thousand square feet (6,000 sq. ft.);

(iv) Is located on Drew Howard Road; and

(v) Is located in any county having a population of not less than fifty-six thousand (56,000) nor more than fifty-six thousand one hundred (56,100), according to the 2010 federal census or any subsequent federal census;

(NNNN) A commercially operated marina, resort, and recreational facility that:

(i) Is located between day markers fifteen (15) and sixteen (16) on Douglas Lake;

(ii) Operates not less than eighty-eight (88) covered slips, one hundred ten (110) open slips, twelve (12) transient slips, and six (6) house boat slips;

(iii) Operates a full-service store offering fuel, live bait and tackle, food, and beverages;

(iv) Is open not less than three hundred sixty-three (363) days per year;

(v) Rents pontoons, fishing boats, and paddle boards;

(vi) Operates a boat ramp that is open year-round;

(vii) Operates a recreational vehicle (RV) campground with not less than seventy (70) RV sites;

(viii) Operates not less than seven (7) rental properties; and

(ix) Is located in a county having a population of not less than fifty-one thousand four hundred (51,400) nor more than fifty-one thousand five hundred (51,500), according to the 2010 federal census or any subsequent federal census;

(OOOO) A commercially operated facility possessing each of the following characteristics:

(i) The facility operates a full service hotel;

(ii) The facility operates a restaurant with not less than thirty-two (32) seats in the dining room, eight (8) seats in the bar, and twenty-eight (28) outdoor seats located under a wrap-around porch;

(iii) The facility operates a nine-hole golf course and a golf lodge;

(iv) The facility serves as a wedding and events venue; and

(v) The facility is located within one (1) mile of Highway 41A and within two (2) miles of Lake O'Donnell in a county with a population of not less than forty-one thousand (41,000) and not more than forty-one thousand one hundred (41,100), according to the 2010 federal census or any subsequent federal census;

(PPPP) A commercially operated facility possessing all of the following characteristics:

(i) Has a restaurant open at least six (6) days a week with seating at tables for at least one hundred (100) persons and with additional seasonal seating on a patio for at least eighty (80) persons;

(ii) Is licensed to sell beer;

(iii) Is located in a structure of not less than two thousand five hundred square feet (2,500 sq. ft.);

(iv) Is located on Peavine Road; and

(v) Is located in any county having a population of not less than fifty-six thousand (56,000) nor more than fifty-six thousand one hundred (56,100), according to the 2010 federal census or any subsequent federal census;

(QQQQ)(i) A commercially operated facility having all of the following characteristics:

(a) The facility has approximately sixty-one thousand square feet (61,000 sq. ft.) of interior space;

(b) The facility is located not more than six thousand feet (6,000′) southwest of a federal interstate highway and not more than two hundred feet (200′) west of a federal highway;

(c) The property that the facility is located on is not less than five hundred seventy-five feet (575′) and not more than six hundred fifteen feet (615′) above sea level;

(d) The facility was originally constructed in 2017;

(e) The facility has one (1) permanent structure containing five (5) stories and includes at least one (1) commercial kitchen, an atrium with a glass ceiling having a height of at least thirty feet (30′) with live trees, and a rooftop deck with table service;

(f) The facility is located in or adjacent to a commercial real estate development containing approximately one hundred (100) specialty stores and eateries, and a movie theater;

(g) The facility is located within one hundred feet (100′) of a commercial bank that is a member of the federal deposit insurance corporation;

(h) The facility is approximately one thousand eight hundred

twenty feet (1,820′) to the northeast of Sugartree Creek;

(i) The facility is approximately four hundred seventy feet (470′) to the northwest of the main building of a public high school that was originally constructed before 1939;

(j) The facility is approximately one thousand four hundred fifty feet (1,450′) to the southwest of a public library that was originally constructed before 2000;

(k) The facility is located within a county with a metropolitan form of government having a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census; and

(l) The facility must not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(ii) The premises of any facility licensed under this subdivision (27)(QQQQ) means any or all of the property that constitutes the facility. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(RRRR) An agritourism facility possessing all of the following characteristics:

(i) Is located on at least three hundred (300) owned or leased acres;

(ii) Is located within a county having a metropolitan form of government and a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census;

(iii) Is bounded on one (1) side by at least three-quarters (¾) of a mile of the Cumberland River and on the other side by one-half (½) of a mile of a state scenic highway;

(iv) Has been certified as an organic farm for a period of at least three (3) years prior to the date of the initial application for a license;

(v) Is primarily zoned agricultural and operates an on-farm market on that site in addition to possessing substantial acreage of green space at the date of initial application for a license; and

(vi) Maintains meeting centers for community events;

(SSSS)(i) A commercially operated facility having all of the following characteristics:

(a) The facility is located on approximately six (6) acres of land that is adjacent to two (2) permanent structures which are owned by the same owner of the facility having approximately seventy thousand square feet (70,000 sq. ft.) of retail and office commercial space, and is located no more than three hundred feet (300′) from a federal highway;

(b) The facility has at least one (1) permanent structure with approximately sixty thousand square feet (60,000 sq. ft.) located no more than five hundred feet (500′) from a federal highway and less than two thousand five hundred feet (2,500′) south of a commercial railroad track. The structure is not less than five hundred twenty-five feet (525′) and not more than five hundred seventy-five feet (575′) above sea level. The structure was renovated in 2016 and 2017;

(c) The facility formerly housed a supermarket business that closed in 2012;

(d) The facility is approximately two thousand two hundred feet (2,200′) to the south of a facility that is accredited by the Association of Zoos and Aquariums that is open to the public;

(e) The facility is located no more than seven thousand feet (7,000′) from a railyard of a Class 1 railroad, as defined by the surface transportation board of the United States department of transportation; and

(f) The facility is located in a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (27)(SSSS) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The entire designated premises is covered under one (1) license issued under this subdivision (27)(SSSS). The licensee and any other entity in the facility licensed under chapter 4 of this title may, upon filing notice with the commission, share a common licensed area on the premises of the facility. The commission shall enforce chapter 4 of this title against each licensee on the premises of the facility and shall not cite, penalize, or take any other adverse action against a licensee for any violation committed by another licensee within a common licensed area on the premises of the facility. There is a rebuttable presumption of liability for a specific licensee for any underage sale based on the specific type of glass or the brand on the cup provided to the minor. In the absence of a glass or cup identifying the licensee, the commission may determine which licensee to cite for an underage sale. If the commission is unable to determine which licensee committed a violation after conducting a reasonable investigation, the commission may issue a citation to one (1) or more licensees that share the common licensed area where the violation occurred;

(iii) The licensee and any other licensed entity in the facility that holds a license under this chapter may store beer and alcoholic beverages in a central storage location in the facility. Each licensed entity shall store its inventory of beer and alcoholic beverages in a separately locked cage or other storage area;

(iv) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (27)(SSSS) means, for beer permitting purposes, any or all of the property that constitutes the facility. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. The entire designated premises is covered under one beer permit issued under chapter 5 of this title. The beer permittee and any other entity in the facility that holds a beer permit issued by the local

beer board may, upon filing notice with the beer board, share a common permitted area on the premises of the facility. The beer board shall enforce chapter 5 of this title against each permittee on the premises of the facility and shall not cite, penalize, or take any other adverse action against a permittee for any violation committed by another permittee within a common permitted area on the premises of the facility. There is a rebuttable presumption of liability for a specific permittee for any underage sale based on the specific type of glass or the brand on the cup provided to the minor. In the absence of a glass or cup identifying the permittee, the beer board may determine which permittee to cite for an underage sale. If the beer board is unable to determine which permittee committed a violation after conducting a reasonable investigation, the beer board may issue a citation to one (1) or more permittees that share the common permitted area where the violation occurred;

(v) Notwithstanding § 57-3-806(e), the owner of the facility may prohibit or restrict, through its lease or other agreements with other businesses, the on-premise sale of beer or alcoholic beverages by other businesses at the facility;

(vi) Notwithstanding § 57-4-101(n), table service is not required for the service of alcoholic beverages or beer as authorized by this subdivision (27)(SSSS); and

(vii) The facility, landlord, or any licensee shall provide periodic security for the entire licensed premises;

(TTTT)(i) A commercially operated recreational facility, whether open to the public or limited to members and guests of a corporation, limited liability company, or association, or of a development in which it is located, owned, and operated by a corporation, limited liability company, or association, having all of the following characteristics:

(a) The facility is located in or adjacent to a residential real estate development containing between seven hundred (700) and eight hundred (800) acres, a portion of which was formerly the home of a music industry entertainer who began her career with a successful recording at the age of thirteen (13);

(b) The facility has at least one (1) permanent structure, open to the public or to members and their guests, having at least two thousand square feet (2,000 sq. ft.);

(c) The closest boundary of the real estate development in which the facility is located must be located no more than three thousand feet (3,000′) from the right-of-way of Interstate 840 and situated between Cox and Patton roads;

(d) The facility maintains a golf course having at least eighteen (18) holes, which has a current or past golf professional on staff at the golf course;

(e) The facility has at least one (1) room or rooms that are regularly kept, used, and maintained as a place where meals are regularly served, with adequate and sanitary kitchen facilities and seating at tables for at least thirty (30) persons;

(f) The facility is located on property with elevations that vary between less than seven hundred fifty feet (750′) above sea level to

more than nine hundred fifty feet (950′) above sea level;

(g) The facility is located in a county having a population of not less than one hundred eighty-three thousand one hundred (183,100) nor more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census;

(h) The planning commission of a county in which the facility is located has approved of subdividing the property into more than four hundred (400) residential lots that can be offered for sale for home construction; and

(i) The facility does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(ii) The premises of any facility licensed under this subdivision (27)(TTTT) shall mean any or all of the property that constitutes the facility, including swimming pools, tennis courts, golf courses, paths, and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(UUUU)(i) A commercially operated facility having all of the following characteristics:

(a) The facility is located on approximately twenty-seven (27) acres of land that is adjacent to a tributary of Arrington Creek and located along U.S. Route 96;

(b) The facility has at least one (1) permanent structure constructed in 2016 with at least eight thousand four hundred square feet (8,400 sq. ft.) of climate-controlled space;

(c) The facility is on property that has a lake with an island having approximately nine thousand square feet (9,000 sq. ft.) of space that contains outdoor amenities, including a sound system;

(d) The facility is located in a county having a population of not less than one hundred eighty-three thousand one hundred (183,100) and not more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census; and

(e) The facility does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(ii) The premises of any facility licensed under this subdivision (27)(UUUU) means any or all of the property that constitutes the facility, including a barn, man-made island, paths, and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(VVVV)(i) A commercially operated facility possessing the following characteristics:

(a) The facility is located on at least twenty (20) acres;

(b) The facility provides overnight accommodations with no less than fifty (50) guest rooms;

(c) The facility serves at least one (1) meal per day in a dining room

that seats at least seventy-five (75) persons;

(d) The facility is located on property that is within one-quarter (1/4) mile of the intersection of Carters Creek Pike and Southall Road; and

(e) The facility is located in a county having a population of not less than one hundred eighty-three thousand one hundred (183,100) nor more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (27)(VVVV) means any or all of the property that constitutes the facility, including restaurants, cabins, lodges, clubhouses, swimming pools, tennis courts, golf courses, paths, and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(iii) Any facility licensed under this subdivision (27)(VVVV) may be issued one (1) or more licenses for consumption on the premises;

(iv) Any facility licensed under this subdivision (27)(VVVV) may seek an additional license as a caterer under § 57-4-102(6);

(v) Any facility licensed under this subdivision (27)(VVVV) may hold any of the licenses authorized under this subdivision (27)(VVVV) or may grant a franchise to one (1) or more entities for any or all such licenses;

(vi) Any facility licensed under this subdivision (27)(VVVV) may deliver sealed bottles to any area within the licensed premises of the facility;

(WWWW) A commercially operated facility possessing each of the following characteristics:

(i) The facility operates a restaurant with not less than fifty (50) seats in the dining room, not less than six (6) seats at the bar, and outdoor seating on the wrap-around porch;

(ii) The restaurant is equipped to serve breakfast, lunch, and dinner and does so on a regular basis;

(iii) The facility operates an eighteen-hole golf course and has a large, log cabin style clubhouse with not less than seven thousand square feet (7,000 sq. ft.);

(iv) The facility serves as a wedding and event venue; and

(v) The facility is located not more than six (6) miles from Interstate 40 and Interstate 840 and is situated in a county having a population of not less than one hundred thirteen thousand nine hundred (113,900) and not more than one hundred fourteen thousand (114,000), according to the 2010 federal census and any subsequent federal census;

(XXXX) A facility operated either commercially or on a nonprofit basis that:

(i) Is a community theatre and event center that officially opened in 1934;

(ii) Was renovated and reopened in 1974;

(iii) As of April 12, 2018, operates as a 501(c)(3) nonprofit

organization;

(iv) Is a historic community and private event venue; and

(v) Is located in a municipality with a population of not less than fifteen thousand sixty (15,060) and not more than fifteen thousand sixty-nine (15,069), according to the 2010 and any subsequent federal census;

(YYYY) A commercially operated facility that is:

(i) Located on approximately two hundred forty-seven (247) acres, subject to a conservation easement on approximately two hundred (200) of the acres;

(ii) Located on a peninsula adjacent to the Tennessee River;

(iii) Located on property across which an abandoned railroad bed lies;

(iv) A venue for weddings, meetings, and events; and

(v) Located in a county with a population of not less than one hundred twenty-three thousand one (123,001) nor more than one hundred twenty-three thousand one hundred (123,100), according to the 2010 or any subsequent federal census;

(ZZZZ) A commercially operated facility that:

(i) Is located on at least sixty (60) acres of land which came from an original land grant with a home on the property built in 1781;

(ii) Has a stream with a dam on the premises;

(iii) Has a restaurant that was primarily built from two wrecked barns, that serves a full menu of hot foods at least four (4) days per week, that possesses a full service kitchen, that has seating inside for at least sixty (60) persons at tables, and that has outdoor patio seats for at least twenty-five (25) persons;

(iv) Has a pavilion that seats at least one hundred twenty-five (125) persons;

(v) Hosts various events, including, but not limited to, weddings, civic and other club meetings, church groups, and car shows; and

(vi) Is located in a county with a population of not less than fifty-six thousand eight hundred (56,800) and not more than fifty-six thousand nine hundred (56,900), according to the 2010 or any subsequent federal census;

(AAAAA) A commercially operated facility that:

(i) Is located on approximately fifty-five (55) to seventy-five (75) acres;

(ii) Is located on the banks of the Powell River;

(iii) Has a restaurant that serves a full menu of hot foods at least four (4) days per week, that possesses a full service kitchen which includes at least a stove top, an oven, a refrigerator, and a freezer, that has at least three thousand five hundred square feet (3,500 sq. ft.) inside, that has an outdoor deck of at least one thousand five hundred square feet (1,500 sq. ft.), that has seating inside for at least eighty (80) persons at tables, and that has outside deck seating for at least eighty (80) persons at tables;

(iv) Possesses a beer license;

(v) Makes available kayaks and tubes for rent for floating on the Powell River; and

(vi) Is located in a county with a population of not less than thirty-two thousand two hundred (32,200) and not more than thirty-two thousand three hundred (32,300), according to the 2010 or any subsequent federal census;

(BBBBB)(i) A commercially operated facility that:

(a) Is located on at least one-half (½) acre of land with at least one hundred sixty feet (160′) of road frontage and is in a building with a convenience store with separate entrances;

(b) Has a restaurant with a license to serve beer, and which serves a full menu of hot foods at least five (5) days per week, except for seasonal closings and renovations, and possesses a full-service kitchen with seating in the main dining area for at least fifty (50) persons at tables, a bar seating area of at least forty (40) persons at the bar and tables, an outdoor patio area with seats and picnic tables for at least forty (40) persons, an outdoor tiki bar with seating for at least eight (8) persons at the bar, and a covered porch off the bar area with at least eight (8) seats, and which hosts live music on a regular weekly basis;

(c) Has an enclosed recreational and events building, with its own entrances, including garage doors, of at least two thousand three hundred square feet (2,300 sq. ft.), which is fully plumbed and in which pool, darts, and corn hole are played, and which hosts various private events and ticketed public events with an admission fee; and

(d) Is located in a county with a population of not less than thirty-two thousand two hundred (32,200) nor more than thirty-two thousand three hundred (32,300), according to the 2010 or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (27)(BBBBB) means any and all of the property that constitutes the facility. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(CCCCC)(i) A commercially operated facility that:

(a) Is located on at least one hundred seventy-five (175) acres of land that is situated on Pennington Bend adjacent to the Cumberland River;

(b) Serves as a venue for weddings, meetings, tournaments, and events;

(c) Includes an 18-hole golf course, a clubhouse with a restaurant that serves lunch and dinner with seating for at least sixty (60) guests, a golf shop, locker rooms, a covered outdoor pavilion with seating for at least two hundred (200) guests, and meeting rooms;

(d) Is located less than one (1) mile from a hotel containing at least two thousand eight hundred (2,800) rooms, six hundred forty thousand (640,000) square feet of meeting space, and nine (9) acres of indoor gardens;

(e) Is located in a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal

census; and

(f) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(ii) The premises of any facility licensed under this subdivision (27)(CCCCC) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The entire designated premises is covered under one (1) license issued under this subdivision (27)(CCCCC); and

(iii) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (27)(CCCCC) means, for beer permitting purposes, any or all of the property that constitutes the facility. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. The entire designated premises is covered under one (1) beer permit issued under chapter 5 of this title;

(DDDDD)(i) A commercially operated facility having all of the following characteristics:

(a) The facility is located on approximately three hundred and sixty (360) acres of land that is adjacent to a reservoir of the Tennessee River created by Watts Bar Dam;

(b) The facility is located less than two (2) miles west of an area designated as a wildlife management area by the Tennessee fish and wildlife commission that is open to the public;

(c) The facility is located within five (5) miles of Highway 72 in a county with a population of not less than fifty-four thousand one hundred (54,100) and not more than fifty-four thousand two hundred (54,200), according to the 2010 federal census or any subsequent federal census;

(d) The facility is approximately twelve thousand feet (12,000′) southeast of a private airport identified by the federal aviation administration;

(e) The property that the facility is located on is not less than seven hundred twenty-five feet (725′) above sea level nor more than one thousand feet (1000′) above sea level;

(f) The facility includes a restaurant, day spa, tennis courts, barn, farmhouse, fish pond, boat dock, hiking trails, cottages, and a full service inn, with at least twenty (20) rooms for lodging;

(g) The facility serves as a venue for weddings, meetings, conferences, and events; and

(h) The restaurant at the facility serves breakfast and dinner and caters for events, with seating for at least two hundred (200) guests;

(ii) The premises of any facility licensed under this subdivision (27)(DDDDD) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the

commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The entire designated premises is covered under one (1) license issued under this subdivision (27)(DDDDD);

(iii) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (27)(DDDDD) means for beer permitting purposes any or all of the property that constitutes the facility. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. The entire designated premises is covered under one (1) beer permit issued under chapter 5 of this title; and

(iv) The requirements of § 57-5-105(b)(1) do not apply to any facility licensed under this subdivision (27)(DDDDD);

(EEEEE) A commercially operated facility having the following characteristics:

(i) The facility was built in 1894 and has been restored to represent its original features;

(ii) The facility has a seating capacity for approximately one hundred (100) persons;

(iii) The facility is a venue for weddings, receptions, reunions, and other similar events, and opened for business in January of 2017; and

(iv) The facility is located in a county with a population of not less than fifty-two thousand seven hundred (52,700) and not more than fifty-two thousand eight hundred (52,800), according to the 2010 or any subsequent federal census;

(FFFFF) A commercially operated facility possessing each of the following characteristics:

(i) The facility is a restaurant floating on Tims Ford Lake at a commercially operated marina on Sail Away Lane;

(ii) The facility is accessible by both water and land, with docking areas for watercraft and parking areas for vehicles;

(iii) The facility is licensed to sell beer; and

(iv) The facility is located in a county having a population of not less than forty-one thousand (41,000) and not more than forty-one thousand one hundred (41,100), according to the 2010 or any subsequent federal census;

(GGGGG)(i) A commercially operated recreational facility, whether operated by a corporation, limited liability company, or association, having all of the following characteristics:

(a) The facility is located on Cordell Hull Lake on property leased from the United States army corps of engineers;

(b) The facility has at least one hundred twenty (120) boat slips ranging in size up to sixty feet (60′) in length;

(c) The facility includes a full-service restaurant open to the public;

(d) The facility maintains at least four (4) two-bedroom cabins and at least four (4) hotel rooms available for rent to the public;

(e) The facility operates a full-service campground with at least twenty (20) campsites with septic, electric, and potable water

hook-ups;

(f) The facility is located within a county having a population of not less than eleven thousand six hundred (11,600) nor more than eleven thousand seven hundred (11,700), according to the 2010 federal census or any subsequent federal census; and

(g) The facility does not discriminate against any patron on the basis of age, gender, sexual orientation, race, religion, or national origin;

(ii) The premises of any facility licensed under this subdivision (27)(GGGGG) includes all of the property constituting the facility. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(HHHHH)(i) A commercially operated facility that:

(a) Has a full-service restaurant that stands alone, or is part of a larger building or complex, but has its own entrance;

(b) Has a full-service kitchen that possesses at least one (1) of each the following: a stove; an oven; a refrigerator; and a freezer;

(c) Is open at least five (5) days per week, and serves at least twelve (12) meals each week;

(d) Has seating for at least seventy-five (75) persons at tables and has seating in the bar area at the bar, on stools around tables, or chairs around tables;

(e) Is located on at least eighteen (18) acres; and

(f) Is located in a county having a population of not less than thirty-two thousand two hundred (32,200) and not more than thirty-two thousand three hundred (32,300), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (27)(HHHHH) means any or all of the property that constitutes the facility; and

(iii) The property described under this subdivision (27)(HHHHH) may be divided into individual parcels or groups of parcels, and any commercial facility located on any of these parcels that meets the criteria in this subdivision (27)(HHHHH) is deemed to be a premier type tourist resort for purposes of obtaining a license;

(IIIII) A commercially operated facility possessing each of the following characteristics:

(i) The facility is located within six and one-half (6.5) miles of Interstate 24 in any county having a population of not less than thirteen thousand seven hundred (13,700) nor more than thirteen thousand seven hundred fifty (13,750), according to the 2010 federal census or any subsequent federal census;

(ii) The facility is located on Charlie Roberts Road;

(iii) The facility is licensed to sell beer; and

(iv) The facility is a music, concert, and entertainment venue located in a cave that is home to a public television program;

(JJJJJ) A commercially operated restaurant that:

(i) Was built in 1892;

(ii) Has not less than one thousand two hundred ninety-five square feet (1,295 sq. ft.);

(iii) Has seating for not less than thirty-two (32) persons;

(iv) Is located not more than five hundred feet (500′) from Dobbins Branch; and

(v) Is located in a county with not less than one hundred eighty-three thousand one hundred (183,100) and not more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 or any subsequent federal census;

(KKKKK) A commercially operated facility that:

(i) Was built in 1977;

(ii) Operates a market and country store;

(iii) Is located on approximately three and one-half (3 ½) acres;

(iv) Is located not more than three thousand feet (3,000′) from the junction of the Harpeth River and Wilkie Branch;

(v) Serves prepared food on the premises; and

(vi) Is located in a county with not less than one hundred eighty-three thousand one hundred (183,100) and not more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 or any subsequent federal census;

(LLLLL) A commercially operated facility that:

(i) Operates as a community performing arts and civics center in a city with a population of not less than eighteen thousand six hundred fifty (18,650) and not more than eighteen thousand six hundred fifty-nine (18,659), according to the 2010 or any subsequent federal census;

(ii) Was originally built as a school in 1886;

(iii) Contains an auditorium with a full stage, a proscenium arch, and seating for not less than four hundred (400) persons; and

(iv) Contains conference and meeting rooms and a local history museum;

(28)(A) "Premises," when:

(i) Referring to an establishment licensed under this chapter;

(ii) Such establishment is located within an historical district which has been designated as a national historic landmark;

(iii) Such a national historic landmark centers around a public street or right-of-way; and

(iv) Such a public street or right-of-way is closed to motor vehicular traffic on a regular basis;

includes the area encompassed by the boundaries of the historic district; provided, that the granting of a license for a business location within such historical district shall not preclude the granting of another license to another establishment located within the boundaries of the historic district. This subdivision (28) applies only to counties with a population of more than four hundred thousand (400,000), according to the 1980 census, but those counties having a metropolitan form of government shall be exempt from this subdivision (28). In such county, only for the purposes of the hours of sale provided in § 57-4-203(d)(4), "premises" also includes

any establishment located within four (4) blocks west of the western boundary of the historic district and on the same public street or right of way as the historic district; provided, that the requirement of closing the street or right-of-way to motor vehicular traffic on a regular basis shall not apply to the extension of the premises established by this sentence;

(B)(i) "Premises," when:

(a) Referring to an establishment licensed under this chapter;

(b) Such establishment is located within a central improvement district; and

(c) The central improvement district is located in a county having a metropolitan government that has a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

includes only the area located between a convention center, its designated convention center hotel, and a museum that is attached to the convention center hotel; and the one (1) block of public roadway on Fifth Avenue between Demonbreun Street and Korean Veterans Boulevard; and

(ii) This subdivision (28)(B) shall only be effective in any county upon the adoption of a resolution by a majority vote of the local legislative body approving the use of this definition of "premises";

(C) "Premises," when:

(i) Referring to one (1) or more establishments licensed under this chapter; and

(ii) Such establishments are located:

(a) Within a home rule municipality in a county with a population of not less than three hundred thirty-six thousand four hundred (336,400) and not more than three hundred thirty-six thousand five hundred (336,500), according to the 2010 federal census or any subsequent federal census; and

(b) Within or adjacent to an area that is a five hundred seventy-five foot (575′) paver lined street with a right of way that is approximately forty feet (40′) wide extending from Market Street on the western boundary to Rossville Avenue on the eastern boundary; that is bordered along its northern boundary by a historic railroad terminal station that has been listed on the National Register of Historic Places since 1974; and that is bordered along its northern boundary by property zoned for urban-industrial mixed use and along its southern boundary by property that is zoned for urban-commercial mixed use;

includes the area described in subdivision (28)(C)(ii)(*b*). The granting of a license for a business located within or adjacent to the boundaries of the area described in subdivision (28)(C)(ii)(*b*) does not preclude the granting of another license to another establishment located within or adjacent to such area;

(29) "Public aquarium" means a facility which contains a collection of living aquatic animals whose sole or primary habitat is water and which facility provides for care and housing for public exhibition, and also possesses the following characteristics:

(A) The exhibits containing live aquatic animals for public viewing are housed in a building having at least one hundred thousand square feet (100,000 sq. ft.) of interior space;

(B) The exhibits containing live aquatic animals for public viewing contain a minimum total of five hundred thousand gallons (500,000 gals.) of water as the living environment of the animals; and

(C) The public aquarium is located in a county having a population in excess of two hundred fifty thousand (250,000), according to the 1990 federal census or any subsequent federal census;

(30)(A) "Restaurant" means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and seating capacity of at least forty (40) people at tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. An establishment shall be eligible for licensure as a restaurant in accordance with this part, if the establishment is open at least three (3) days a week, with the exception of holidays, vacations, periods of redecorating and seasonal closings, and more than fifty percent (50%) of the gross revenue of the restaurant is generated from the serving of meals. As used in this subdivision (30), "seasonal closing" means the period from November 1 to March 1 or a period of time, if different from such dates, as filed by the restaurant with the alcoholic beverage commission;

(B) "Restaurant" also means any bowling center that was licensed as of January 1, 1983, to sell alcoholic beverages for consumption on the premises;

(C)(i) Within a national historical landmark district or urban park center, as defined by this section, restaurant licensees shall not be required to meet any requirements of this section which make food service, maintenance of a kitchen, or a dining room a prerequisite to the issuance of a restaurant permit to serve liquor by the drink. This subdivision (30)(C) applies only to counties with a population of more than four hundred thousand (400,000), according to the 1980 census, but those counties having a metropolitan form of government shall be exempt from this subdivision (30)(C);

(ii) Within a sports authority facility as defined in this section, restaurant licensees shall not be required to meet any of the requirements of subdivision (30)(A) which make food service, maintenance of a kitchen, or a dining room a prerequisite for the issuance of a permit to serve liquor by the drink;

(D) Notwithstanding the minimum seating capacity established in subdivision (30)(A), for the purpose of a permit to serve wine, "restaurant" means any lodge or resort with sleeping accommodations where meals are served that is located on land which is owned by the United States department of the interior, is operated by the national park service or its agents or contractors and is located in a county with a population of not less than forty-one thousand four hundred (41,400) nor more than forty-

one thousand five hundred (41,500), according to the 1980 federal census or any subsequent federal census;

(E) "Restaurant" also means a facility located in any municipality having a population in excess of one hundred thousand (100,000), according to the 1990 federal census, or any subsequent federal census, in which coffees, teas, pastries, and other foodstuffs are offered for sale for consumption on the premises, which facility has a seating capacity of at least thirty (30) seats and which facility obtains at least fifty percent (50%) of its annual gross sales from the sale of coffees, teas and pastries. Any restaurant licensed under this subdivision (30)(E) shall be authorized to sell alcoholic beverages for consumption on the premises only when such beverages are mixed with coffees, teas and other beverages. A restaurant licensed under this subdivision (30)(E) need not meet the requirement of subdivision (30)(A);

(F) "Restaurant" also means a facility:

(i) Located within one-half (½) mile of the railroad tracks in the unincorporated area of any county having a population of not less than thirty thousand two hundred (30,200) nor more than thirty thousand four hundred seventy-five (30,475), according to the 1990 federal census or any subsequent federal census;

(ii) Whose primary source of income is from serving meals to its patrons, both indoors and out-of-doors, and has a total seating capacity of at least seventy-five (75) people at tables;

(iii) Located in a building having a total square footage of at least two thousand five hundred square feet (2,500 sq. ft.) which was constructed prior to 1925; and

(iv) Which is located on a site used during the Civil War or within two (2) miles of two (2) or more Civil War sites, or is within one and one-half (1 ½) miles of a home that was built in 1884, and which is preserved as the area's best example of the Queen Anne and Eastlake architectural styles;

(G) "Restaurant" also means a facility:

(i) Located on Highway 243 in a county having a population of not less than sixty-nine thousand four hundred (69,400) nor more than sixty-nine thousand five hundred (69,500), according to the 2000 federal census or any subsequent federal census;

(ii) That has seating for not more than one hundred forty (140) people;

(iii) That has a music and entertainment orientation;

(iv) Whose primary source of income is derived from serving meals to its patrons;

(v) That has a historic working original malt and soda fountain;

(vi) That is located in a historical structure formerly used as a town hall as well as a practice venue for Grand Ole Opry hopefuls; and

(vii) That does not discriminate against any patron on the basis of age, gender, race, religion or origin;

(H)(i) Restaurant also means a facility that:

(a) Is owned, operated or leased by a for-profit organization orga-

nized under the laws of this state;

(b) Does not discriminate against any patron on the basis of gender, race, religion or national origin;

(c) Provides food service to the public or for private events and catering with seating capacity for at least two hundred fifty (250) persons at tables, whether or not the seating is inside or on a deck or patio;

(d) Is open at least five (5) days a week serving two (2) meals daily with the exception of holidays, vacations, seasonal conditions and periods of redecorating, with suitable kitchen, dining facilities and equipment;

(e) Is in the center of a full service marina and resort located on the Tennessee River at mile marker 477.5; which full service marina has at least six hundred (600) dry storage slips and wet slips up to eighty feet (80′) that offers two (2) cabins completely furnished and an inn with twelve (12) rooms that overlooks the Tennessee River; and

(f) Is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(ii) A restaurant under this subdivision (30)(H) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(I) "Restaurant" also means a facility:

(i) Located on State Route 46, Old Hillsboro Road, in any county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census;

(ii) Which is located 1.66 miles from the Natchez Trace Parkway Exit off of Pinewood Road;

(iii) Whose primary source of income is from serving meals to its patrons;

(iv) Which first opened as a restaurant in 1968;

(v) Which does not operate as a grocery store; and

(vi) Which does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(J) "Restaurant" also means a facility that:

(i) Is located in a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(ii) Is a twenty-four-hour-a-day diner;

(iii) Is located in a central business improvement district as of 2017;

(iv) Serves full meals and has a full-time kitchen staff, twenty-four (24) hours a day;

(v) Holds a valid license from the commission;

(vi) Is located in a separate, unattached building;

(vii) Does not permit live music or entertainment, nor share walls

with any establishment offering live music or entertainment; and

(viii) Has six (6) floors and at least seventeen thousand square feet (17,000 sq. ft.); and

(K) "Restaurant" also means a facility that:

(i) Is located in a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(ii) Is situated to the east and to the west of the Cumberland River in Pennington Bend;

(iii) Is located approximately two thousand feet (2,000′) to the northwest of a resort and convention center;

(iv) Is a venue for live music;

(v) Has an outdoor deck that is approximately three thousand square feet (3,000 sq. ft.); and

(vi) Operates a restaurant that is approximately eight thousand square feet (8,000 sq. ft.) with a seating capacity of approximately two hundred fifty (250);

(31) "Retirement center" means a facility that contains each of the following characteristics:

(A) The center is located in a county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census;

(B) The center is located on a single parcel of land not less than forty eight (48) acres and not more than forty-nine (49) acres in area;

(C) The center will consist of individual living unit apartments, individual living unit villas, an assisted living facility, a nursing home facility, a club house and common areas;

(D) The center will have a club house that houses a health club, game room, lounge and a dining facility;

(E) The center's lounge in the club house will offer to the center's residents and their guests only food, nonalcoholic beverages, mixed alcoholic drinks, wine and beer, as well as make available in the dining facility and other areas within the center's property, for the center's residents and guests only, mixed alcoholic drinks, wine and beer; and

(F) The center does not discriminate against any patron on the basis of gender, race, religion or national origin;

(32) "Special historic district" means any area with specific boundaries that possesses the following characteristics:

(A) Was organized pursuant to a municipal urban planning and development board;

(B) Contains within such special historic district an historic district listed on the national register of historic places;

(C) Is located on a trolley line; and

(D) Is located in any county having a population of eight hundred thousand (800,000) or more, according to the 2000 federal census or any subsequent federal census;

(33)(A) "Special occasion license" means a license which the commission may issue to a bona fide charitable, nonprofit or political organization.

Such license shall be issued for no longer than one (1) twenty-four-hour period, subject to the limitations of hours of sale which may be imposed by law or regulation, and such license may be issued in advance of its effective date;

(B) If a bona fide charitable or nonprofit organization owns and maintains a permanently staffed facility which:

(i) Is used for the periodic showing or exhibition of animals;

(ii) Has a seating capacity of not less than twenty-five thousand (25,000) persons; and

(iii) Has a separate permanently constructed clubhouse or meeting room located on the grounds,

then a special occasion license may be issued for use at the clubhouse or meeting room for the duration of the particular show or exhibit for which application is made, and such organization shall not be subject to the numeric limitation contained in the last sentence of this subdivision (33). This license shall only be available upon the payment of the fee as required by law for each separate day of the show;

(C) Such license shall not be issued unless and until there shall have been paid to the commission for each such license a license fee of one hundred dollars ($100), and there shall have been submitted an application which designates the premises upon which alcoholic beverages shall be served. No such charitable, nonprofit or political organization shall be eligible to receive more than twelve (12) special occasion licenses in any calendar year;

(D) A special occasion license under this section may also be issued to a nonprofit historical society for the purpose of serving complimentary samples of homemade wine manufactured in the Swiss tradition by a society member or members, the complimentary samples not to exceed one ounce (1 oz.) per wine type per person to be served at an annual festival conducted by a society celebrating the Swiss heritage at a farm museum in any county having a population of not less than fourteen thousand three hundred (14,300) nor more than fourteen thousand four hundred (14,400), according to the 2000 federal census or any subsequent federal census;

(E) Any entity holding a special occasion license issued under this subdivision (33) or members of the licensee may transport wine and other alcoholic beverages to the location for which the special occasion license is issued;

(F) "Special occasion license" also means a license, issued by the commission, to a bona-fide charitable organization, recognized as exempt from taxation by the internal revenue service pursuant to § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)), which organization has been in continuous operation as a tax-exempt entity for at least twenty (20) years, and which organization has an annual budget of at least one million dollars ($1,000,000). A special occasion license issued pursuant to this subdivision (33)(F) shall be authorized to sell wine in closed containers for consumption on or off the premises notwithstanding the restrictions of § 57-4-203. Any licensee holding a license issued pursuant to § 57-3-202, § 57-3-203, § 57-3-204, § 57-3-207, § 57-3-605 or § 57-4-101

may donate wine to an organization holding a special occasion license issued pursuant to this subdivision (33)(F) for an event conducted by the special occasion licensee. Any resident of Tennessee may donate wine, which brand of wine has been registered pursuant to § 57-3-301, to an organization holding a special occasion license issued pursuant to this subdivision (33)(F) for sale or consumption at an event conducted by the special occasion licensee;

(G) A special occasion license under this section may also be issued to a bona fide charitable organization that benefits charities which support women and children in Middle Tennessee and which:

(i) Holds the event in a county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census, on property used as a veterinary clinic located on a six and sixty-five one hundredths (6.65) acre lot that shares a common boundary between a municipality and the unincorporated area of such county;

(ii) Jurisdictions within the boundaries of such county have by referendum adopted both the sale of alcoholic beverages at retail package stores and for consumption on the premises;

(iii) Is a one-day annual event restricted to persons twenty-one (21) years of age or older;

(iv) Holds a grape stomp contest with teams made up of four (4) stompers and one (1) swabbie, who collects the juice created by the stompers in a jar, with the team producing the most juice winning the contest;

(v) Includes numerous food vendors;

(vi) Has wine and spirits tastings; and

(vii) Where alcoholic beverages are served but not sold;

(H) A special occasion license under this section may also be issued to a nonprofit community association for the purpose of serving samples of wine to persons holding a presold ticket for an annual fundraiser, the samples not to exceed two ounces (2 oz.) per wine per person to be served at the annual fundraiser conducted by the community association in any county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census. The fundraiser shall be an insured event with at least ten (10) wineries or restaurants participating in the event and food shall be available to attendees;

(34)(A) "Sports authority facility" means a facility possessing the following characteristics:

(i) The facility is owned or operated by a sports authority established under title 7, chapter 67, a public building authority or a governmental entity;

(ii) The facility is designed and used for presentation of professional sporting events and other activities, such as amateur sporting events, recreational activities and entertainment events and activities, and

includes retail sales areas and retail food dispensing outlets, including, but not limited to, restaurant areas to accommodate liquor by the drink as well as food patronage;

(iii) A major or minor league professional baseball (American, National or Minor League), football (National Football League), basketball (National Basketball Association) or hockey (National Hockey League) franchise has entered into a long-term agreement to play its home games in the facility; and

(iv) The facility is located in a municipality or county having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(B) "Sports authority facility" also means a facility possessing the following characteristics:

(i) The facility includes a stadium that was constructed in 1997 and that has a seating capacity of twenty thousand (20,000) or more;

(ii) The facility is designed and used for sporting and other municipal events;

(iii) The facility is located in a home rule municipality located in a county with a population of not less than three hundred thirty-six thousand four hundred (336,400) and not more than three hundred thirty-six thousand five hundred (336,500), according to the 2010 federal census or any subsequent federal census; and

(iv) The facility is located not more than one-half (1/2) mile from the Tennessee River;

(C) "Sports authority facility" also means any facility that is designed and used for school-sanctioned public sporting events on a public university campus located in any county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(D) "Sports authority facility" also means any facility that is designed and used for school-sanctioned public sporting events on a four-year public university campus located in any county having a population of not less than two hundred sixty-two thousand six hundred (262,600) nor more than two hundred sixty-two thousand seven hundred (262,700), according to the 2010 federal census or any subsequent federal census;

(35) "Suite" means any room or group of rooms, leased by the operator of a sports authority facility or a convention center, physically located within such facility or center, where access to such room or rooms is restricted to the lessee or such lessee's guests;

(36) "Tennessee River resort district" means a club, hotel, motel, restaurant or limited service restaurant located within a jurisdiction that has elected Tennessee River resort district status pursuant to § 67-6-103(a)(3)(F); provided, that for the purposes of this chapter, such district shall only extend inland for three (3) miles from the nearest bank of the Tennessee River. No entity licensed to sell alcoholic beverages within the boundaries of any such resort district shall discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(37) "Terminal building of a commercial air carrier airport" means a building, including any concourses thereof, used by commercial airlines and

their customers for sale of airline tickets, enplaning and deplaning of airline passengers, loading and unloading of baggage and cargo, and for providing other related services for the convenience of airline passengers and others, located in any airport which is served by one (1) or more commercial airlines, and:

(A) Is operated by a board of commissioners whose membership is appointed by the legislative bodies of five (5) or more local governments or whose membership is appointed pursuant to § 42-4-105; or

(B) Is located in a municipality where this chapter has become effective in that municipality;

(38)(A) "Theater" means any establishment in which motion pictures are exhibited to the public regularly for a charge. Such theater shall have an area that is enclosed by glass and which is accessed through a set of double doors by patrons who must be twenty-one (21) years of age or older to enter. Such theater shall be part of a retail and entertainment complex located one (1) block from a historical district that has been designated as a national historic landmark that centers around a public street or right-of-way. Such theater shall be located in a county having a population of eight hundred thousand (800,000) or more, according to the 1990 federal census or any subsequent federal census;

(B) "Theater" also means any establishment in which motion pictures are exhibited to the public regularly for a charge and which possesses the following characteristics:

(i) Is a twelve (12) auditorium theater that is one hundred percent (100%) digital;

(ii) Is certified by the United States Green Building Council as the nation's first stand-alone theater boasting energy and environmental sensitive design;

(iii) Has one (1) auditorium restricted to patrons twenty-one (21) years of age or older; and

(iv) Is located downtown near a river in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(C) "Theater" also means an establishment in which motion pictures are exhibited to the public regularly for a charge. The theater shall have a local beer permit for on-premises consumption. The theater shall regularly serve prepared food to patrons and each auditorium in which alcoholic beverages may be consumed shall allow dining at each seat in the auditorium. Prior to making a sale of any alcoholic beverage, a valid, government-issued document, such as a driver license or other form of identification deemed acceptable to the license holder that includes a photograph and date of birth of the adult consumer attempting to make the purchase, shall be produced to the licensee. The theater shall also periodically visually monitor all auditoriums in which alcoholic beverages are permitted and each beverage containing an alcoholic beverage shall be distinct from any other container used to serve nonalcoholic beverages;

(39)(A) "Urban park center" means a facility or designated area possess-

ing the following characteristics:

(i) The center is owned, operated, or leased by a municipal or county government, or any agency or commission thereof;

(ii) The center is designed to contain outdoor recreational facilities, public museum buildings, exhibition buildings, retail sales areas, retail food dispensing outlets including, but not limited to, sale of package alcoholic and malt beverages, and restaurant areas to accommodate liquor-by-the-drink as well as food patronage; and

(iii) The center is located in a municipality or county having a population in excess of six hundred thousand (600,000), according to the 1970 federal census or any subsequent census;

(B)(i) "Urban park center" also means an outdoor fixed structure amphitheater utilized as a performance venue, containing fixed seating for at least five thousand one hundred (5,100) persons. Such facility or designated area shall be secured by adequate perimeter fencing.

(ii) This subdivision (39)(B) applies in any county with a metropolitan form of government with a population of not less than five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(C) "Urban park center" also means a facility or designated area that possesses the following characteristics:

(i) Consists of at least two (2) theater spaces in which live theater, concerts, and films are presented;

(ii) Contains at least ten thousand square feet (10,000 sq. ft.);

(iii) Contains permanent fixed seating for at least three hundred forty-nine (349) persons;

(iv) Contains one (1) performance space constructed prior to 1930 that contains a stage with a fly tower for stage rigging with a height of at least thirty feet (30′);

(v) Is operated by a not-for-profit corporation that qualifies as tax exempt under the Internal Revenue Code, § 501(c)(3) (26 U.S.C. § 501(c)(3)), and such facility or designated area is not a religious organization or a secondary or elementary school;

(vi) A major street is located not more than one hundred feet (100′) from the nearest exterior wall of such facility or designated area; and

(vii) Is located within the jurisdictional limits of a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(D) "Urban park center" also includes a facility or designated area possessing each of the following characteristics:

(i) Is owned, operated or leased by a municipal or county government, or any agency or commission thereof;

(ii) Has an outdoor fixed structure amphitheater utilized as a performance venue;

(iii) Provides or leases facilities for concerts, plays and programs of cultural, civic and educational interest; and

(iv) Is located in any municipality that has authorized the sale of alcoholic beverages for consumption on the premises, in a referendum in

the manner prescribed by § 57-3-106, and the municipality has a population of not less than twenty-three thousand nine hundred twenty (23,920), nor more than twenty-three thousand nine hundred thirty (23,930), according to the 2000 federal census or any subsequent federal census;

(E) "Urban park center" also means a facility or designated area that possesses each of the following characteristics:

(i) Is owned and maintained by a bona fide charitable or nonprofit organization;

(ii) Is used for the periodic showing or exhibition of animals;

(iii) Has a seating capacity of not less than twenty-five thousand (25,000) persons;

(iv) Includes an arena and a permanently constructed clubhouse or meeting room located on the grounds; and

(v) Is located in any county having a population of not less than forty-five thousand (45,000) nor more than forty-five thousand one hundred (45,100), according to the 2010 federal census or any subsequent federal census;

(F)(i) "Urban park center" also means a facility or designated area possessing each of the following characteristics:

(a) Is located on a tract or tracts of land having at least five (5) contiguous acres;

(b) Is located directly adjacent to property owned or leased by an airport authority created under state law;

(c) Has an enclosed facility or designated area of at least twenty thousand square feet (20,000 sq. ft.) and one (1) room with more than fourteen thousand square feet (14,000 sq. ft.);

(d) Has an exterior garden or gardens with sculpture;

(e) Is leased or owned by a not-for-profit corporation that qualifies under § 501(c)(3) of the Internal Revenue Code; and

(f) Is located within a county having a metropolitan form of government with a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census;

(ii) An urban park center licensed under this subdivision (39)(F) shall have the privilege of granting a franchise for the provision of food or beverage, including alcoholic beverages, on its premises, and the holder of such franchise shall also be considered an urban park center under this subdivision (39)(F). The premises of an urban park center under this subdivision (39)(F) shall include all enclosed and outdoor areas of the property described in this subdivision (39)(F);

(G) "Urban park center" also includes a facility or designated area possessing each of the following characteristics:

(i) Is located in a building constructed in 1883 that was originally used as a flour mill and eventually became a cannery;

(ii) Is an entertainment complex open to the public with three (3) facilities used for live music performances;

(iii) Serves or sells food to patrons;

(iv) Is approximately fifty-two thousand square feet (52,000 sq. ft.); and

(v) Is located within a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(H) "Urban park center" also includes a facility or designated area possessing each of the following characteristics:

(i) Is located approximately two (2) blocks from Interstate 40;

(ii) Is located in a building constructed in the 1920s as an automobile factory;

(iii) Is located in a building remodeled in 2011 as a live music venue open to the public;

(iv) Serves or sells food to patrons; and

(v) Is located within a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(I) "Urban park center" also includes a facility or designated area possessing each of the following characteristics:

(i) Is located in the historic Elliston Place neighborhood;

(ii) Is located approximately three (3) blocks from a private university and approximately one (1) block from a nonprofit hospital;

(iii) Serves or sells food to patrons;

(iv) Was opened to the public in 1971 as a live music venue;

(v) Has a stage that is four feet (4′) high and has an indoor balcony; and

(vi) Is located within a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(J) "Urban park center" also includes a facility or designated area possessing each of the following characteristics:

(i) Is located on 8th Avenue approximately one (1) block from Interstate 65;

(ii) Is a live music venue that opened to the public in 2001;

(iii) Is located beneath an independent and nationally acclaimed record store;

(iv) Serves or sells food to patrons;

(v) Is approximately one thousand eight hundred square feet (1,800 sq. ft.); and

(vi) Is located within a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(K) "Urban park center" also includes a facility or designated area possessing each of the following characteristics:

(i) Is located on Forrest Avenue across from a branch of a public library;

(ii) Is a live music venue that promotes local artists that opened to the public in 2003;

(iii) Serves or sells food to patrons;

(iv) Is approximately two thousand seven hundred square feet (2,700 sq. ft.) and has an enclosed exterior patio; and

(v) Is located within a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(L) "Urban park center" also includes a facility or designated area possessing each of the following characteristics:

(i) Is located on First Avenue South;

(ii) Is owned, operated, or leased by a governmental entity;

(iii) Is a facility or designated area designed and used for the presentation of live outdoor music and other events and includes retail sales areas and retail food dispensing outlets, including, but not limited to, restaurant areas to accommodate sales of alcoholic beverages and food; and

(iv) Is located in a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(M)(i) "Urban park center" also includes a facility possessing each of the following characteristics:

(a) Is located on a tract or tracts of land having at least fifty (50) contiguous acres;

(b) A state highway is not more than seven hundred fifty feet (750′) from the nearest property line;

(c) A commercial railroad track is not more than seven hundred fifty feet (750′) from the nearest property line;

(d) Is adjacent to a municipal park having over one thousand nine hundred (1,900) acres;

(e) Has an art museum that was originally constructed prior to 1935 as a private residence;

(f) Has exterior gardens with a stream or streams, pools, fountains, and a stone grotto;

(g) Has a woodland sculpture trail that is over one (1) mile in length;

(h) Is leased or owned by a not-for-profit corporation that qualifies as tax exempt under the Internal Revenue Code § 501(c)(3), (26 U.S.C. § 501(c)(3)); and

(i) Is located within a county having a metropolitan form of government and a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census;

(ii) An urban park center licensed under this subdivision (39)(M) shall have the privilege of granting a franchise pursuant to a written contract for a period of not less than one (1) year for the provision of food or beverage, including alcoholic beverages, on the premises of the urban park center, and the holder of such franchise shall be disclosed to the commission consistent with the disclosures made by the licensee and shall also be considered an urban park center under this subdivision (39)(M). The premises of an urban park center licensed under this

subdivision (39)(M) shall include all enclosed and outdoor areas of the property described in this subdivision (39)(M);

(N)(i) "Urban park center" also includes a commercially operated facility having all of the following characteristics:

(a) The facility is located on approximately one and seven-tenths (1.7) acres of land and has approximately thirty-eight thousand one hundred thirty-five square feet (38,135 sq. ft.) of interior space;

(b) The facility is located no more than ten thousand one hundred feet (10,100′) from a federal interstate highway and less than three thousand two hundred feet (3,200′) west of a commercial railroad track. The structure must be not less than two hundred seventy feet (270′) and not more than three hundred feet (300′) above sea level. The structure must have been originally constructed in 2017;

(c) The facility is located on a property that is adjacent to the intersection of Madison Avenue and Cooper Street;

(d) The property that the facility is located on must have previously housed a structure used as a hotel business that was demolished in 2015;

(e) The facility must be approximately one thousand six hundred eighty feet (1,680′) to the south of a public park located on approximately three hundred forty-two (342) acres and that has a zoo that is accredited by the Association of Zoos and Aquariums that is open to the public;

(f) The facility consists of at least five (5) studio spaces in which live dance is performed, rehearsed, and instructed;

(g) The facility is operated by a not-for-profit corporation that qualifies as tax exempt under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)), and such facility or designated area is not a religious organization or a secondary or elementary school; and

(h) The facility is located in a county with a charter form of government having a population of not less than nine hundred thousand (900,000), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (39)(N) shall mean any or all of the property that constitutes the facility, including all enclosed and outdoor areas of the property. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The entire designated premises shall be covered under one (1) license issued under this subdivision (39)(N);

(iii) Notwithstanding chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (39)(N) shall mean, for beer permitting purposes, any or all of the property that constitutes the facility, including all enclosed and outdoor areas of the property. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. The entire designated premises shall be covered under one (1) beer permit issued

under chapter 5 of this title; and

(iv) An urban park center licensed under this subdivision (39)(N) shall have the privilege of granting a franchise for the provision of food or beverage, including alcoholic beverages, on its premises, and the holder of such franchise shall also be considered an urban park center under this subdivision (39)(N);

(O) "Urban park center" also means:

(i) A commercially operated facility having all of the following characteristics:

(a) The facility is located on land that is between one and one-half (1½) acres and that is adjacent to land owned by the electric power board of a county with a metropolitan form of government;

(b) The facility has at least two (2) permanent structures constructed before 1978 and at least twenty-five thousand square feet (25,000 sq. ft.) of climate controlled space;

(c) The facility formerly housed a custom car design business that had been serving the automotive community since 1968;

(d) The facility is located in a county with a metropolitan form of government having a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census;

(e) The facility is approximately five thousand ninety feet (5,090′) to the northeast of a federal interstate highway;

(f) The facility is approximately five thousand nine hundred sixty feet (5,960′) to the northwest of a navigable waterway; and

(g) The facility is approximately three hundred fifty feet (350′) to the southwest from the main building of a high school that was originally constructed before 1933;

(ii) The premises of any facility described under this subdivision (39)(O) means any or all of the property that constitutes the facility, including all buildings and outdoor areas between and around those buildings. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. An urban park center, as described in subdivision (39)(O)(i), may grant a franchise to one (1) or more entities authorizing such an entity to provide food or beverages, including alcoholic beverages, on its premises. A franchisee is deemed to be an urban park center under this subdivision (39)(O) and shall apply for and hold a license under this subdivision (39)(O). The commission shall enforce chapter 4 of this title against each franchisee as a licensee under this subdivision (39)(O) and shall not cite, penalize, or take any other adverse action against a franchisee for any violation committed by another franchisee on the licensed premises. There is a rebuttable presumption of liability for a specific franchisee for any underage sale based on the specific type of glass or the brand on the cup provided to the minor. In the absence of a glass or cup identifying the franchisee, the commission may determine which franchisee to cite for an underage sale. If the commission is unable to determine which franchisee com-

mitted the violation after conducting a reasonable investigation, the commission may issue a citation to one (1) or more franchisees that share the common space where the violation occurred;

(iii) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility described under this subdivision (39)(O) means, for the purpose of obtaining a beer permit, any or all of the property that constitutes the facility, including all buildings and outdoor areas between and around those buildings. The beer permittee shall designate the premises to be licensed by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. An urban park center, as described in subdivision (39)(O)(i), may grant a franchise to one (1) or more entities authorizing such an entity to provide food or beverages, including beer, on its premises. A franchisee is deemed to be an urban park center under this subdivision (39)(O) and shall apply for and hold a beer permit. The beer board shall enforce chapter 5 of this title against each franchisee as a beer permittee and shall not cite, penalize, or take any other adverse action against a franchisee for any violation committed by another franchisee on the licensed premises. There is a rebuttable presumption of liability for a specific franchisee for any underage sale based on the specific type of glass or the brand on the cup provided to the minor. In the absence of a glass or cup identifying the franchisee, the beer board may determine which franchisee to cite for an underage sale. If the beer board is unable to determine which franchisee committed the violation after conducting a reasonable investigation, the beer board may issue a citation to one (1) or more franchisees that share the common space where the violation occurred; and

(iv) The licensee described in subdivision (39)(O)(i) and any franchisee licensed under this subdivision (39)(O) may store beer and alcoholic beverages in a central storage location in the facility. Each licensee shall store its inventory of beer and alcoholic beverages in a separately locked cage or other storage area;

(P)(i) "Urban park center" also means a facility or designated area having all of the following characteristics:

(a) The easternmost corner of the structure that houses the facility is approximately one thousand four hundred feet (1,400′) southwest of a public park that is adjacent to a navigable waterway;

(b) The easternmost corner of the structure that houses the facility is approximately one thousand one hundred feet (1,100′) southeast of a public park that is adjacent to a public library constructed in 2001;

(c) The easternmost corner of the structure that houses the facility is approximately five hundred feet (500′) northwest of a public park that contains a walkway recognizing professionals in the music industry;

(d) The easternmost corner of the structure that houses the facility is approximately one thousand five hundred feet (1,500′) southwest of a railway station providing commuter rail service that employs standard gauge locomotives and coaches;

(e) The property that houses the facility is across a public street from a live performance venue that was originally constructed in 1892 as a religious facility;

(f) The property that houses the facility is adjacent to a facility originally constructed in 1925 that houses the Grand Lodge of Free and Accepted Masons of Tennessee;

(g) The facility is located in a mixed used development located at the intersection of a federal highway and a municipal street;

(h) The facility is owned, operated, or leased by a bona fide charitable or nonprofit organization;

(i) The facility occupies no less than fifty thousand square feet (50,000 sq. ft.) of commercial space used as a museum that offers informational and educational programming to the community, features historical exhibits, live and pre-recorded music, and may be utilized for public and private occasions, weddings, community meetings, corporate functions, and other events;

(j) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(k) The facility is located in a county with a metropolitan form of government having a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (39)(P) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(iii) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (39)(P) means for beer permitting purposes any or all of the property that constitutes the facility. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing; and

(iv) An urban park center licensed under this subdivision (39)(P) shall have the privilege of granting a franchise for the provision of food or beverage, including alcoholic beverages, on its premises, and the holder of the franchise is deemed to be an urban park center under this subdivision (39)(P);

(40) "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-one percent (21%) by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which the same was predominantly produced, or an artificial or imitation wine; and

(41)(A) "Zoological institution" means a facility which contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is owned, operated, or leased by a municipal or county government;

(ii) The zoo is at least fifty (50) years old; and

(iii) The zoo is located in a county having a population in excess of seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census.

(B) "Zoological institution" means a facility that contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is operated on property leased by a county having a metropolitan form of government and has been opened to the public on that property at least since 1997;

(ii) The zoo has been accredited by and maintains the accreditation of the Association of Zoos and Aquariums (AZA); and

(iii) The zoo is located in a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(C) "Zoological institution" means a facility that contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is operated on property owned by a city and has been opened to the public on that property at least since 1937;

(ii) The zoo has been accredited by and maintains the accreditation of the Association of Zoos and Aquariums (AZA); and

(iii) The zoo is located in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census; and

(D) "Zoological institution" means a facility that contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is operated on property owned by a city and has been opened to the public on that property at least since 1948;

(ii) The zoo has been accredited by and maintains the accreditation of the Association of Zoos and Aquariums (AZA); and

(iii) The zoo is located in a county having a population of not less than three hundred eighty two thousand (382,000) nor more than three hundred eighty two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census.

History.

Acts 1967, ch. 211, § 1; 1972, ch. 682, § 2; 1972, ch. 756, § 3; 1975, ch. 111, § 3; 1975, ch. 347, § 1; 1979, ch. 401, § 2; T.C.A., § 57-153; Acts 1980, ch. 895, § 1; 1980, ch. 898, § 2; 1981, ch. 404, § 2; 1981, ch. 467, §§ 1-4; 1981, ch. 475, § 2; 1982, ch. 691, § 1; 1982, ch. 931, §§ 1-4; 1983, ch. 52, § 2; 1983, ch. 300, §§ 3, 6; 1983, ch. 305, § 1; 1983, ch. 306, § 1; 1983, ch. 391, § 1; 1983, ch. 454, § 4; 1983, ch. 461, §§ 1-4; 1983, ch. 469, § 2; 1983, ch. 481, § 1; 1984, ch. 522, § 1; 1984, ch. 569, § 2; 1984, ch. 599, § 1; 1984, ch. 858, §§ 1-4; 1984, ch. 871, § 1; 1984, ch. 975, § 2; 1985, ch. 41, § 1; 1985, ch. 47, § 1; 1985, ch. 117, § 1; 1985, ch. 190, § 2; 1986, ch. 516, § 1; 1986, ch. 899, § 3; 1987, ch. 73, § 1; 1987, ch. 218, § 1; 1987, ch. 444, §§ 3, 4; 1987, ch. 456, § 1; 1988, ch. 792, § 1; 1988, ch. 942, §§ 1, 2; 1989, ch. 50, § 1; 1989, ch. 361, § 1; 1989, ch. 459, § 1; 1990, ch. 718, § 1; 1990, ch. 730, §§ 1, 2; 1990, ch. 853, § 1; 1990, ch. 949, § 1; 1991, ch. 462, § 1; 1992, ch. 674, § 2; 1992, ch. 675, § 2; 1993, ch. 308, §§ 1, 2; 1994, ch. 657, § 1; 1994, ch. 822, § 1; 1994, ch. 837, § 1; 1994, ch. 933, § 1; 1995, ch. 18, § 1; 1995, ch. 306, § 2; 1996, ch. 688, § 1; 1996, ch. 730, § 1; 1996, ch. 749, § 2; 1996, ch. 1017, § 1; 1997, ch. 146, § 1; 1997, ch. 281, §§ 1-7; 1998, ch. 722, § 1; 1998, ch. 786, § 1; 1998, ch. 795, § 6; 1998, ch. 798, § 1; 1998, ch. 939, §§ 2, 3; 1998, ch. 966, §§ 1, 2; 1999, ch. 211, § 1; 1999, ch. 314, §§ 1, 2, 4; 1999, ch. 525, § 2; 2000, ch. 657, § 2; 2000, ch. 727, § 1; 2001, ch. 64, § 2; 2001, ch. 74, § 1; 2001, ch. 84, § 1; 2001, ch. 112, §§ 1-3; 2001, ch. 371, § 2; 2001, ch. 383, §§ 2, 3; 2002, ch. 647, § 1; 2002, ch. 661, § 1; 2002, ch. 676, § 1; 2002, ch. 679, §§ 1, 2; 2002, ch. 705, §§ 1, 2; 2002, ch. 832, §§ 1, 3, 4; 2003, ch. 132, § 1; 2003, ch. 309, §§ 1, 2; 2003, ch. 314, § 1; 2004, ch. 544, § 1; 2004, ch. 671, §§ 1, 2; 2004, ch. 676, § 1; 2004, ch. 710, § 1; 2004, ch. 857, § 1; 2004, ch. 876, § 6; 2005, ch. 212, § 5; 2005, ch. 253, § 2; 2005, ch. 422, §§ 1-10; 2006, ch. 612, §§ 1-3; 2006, ch. 733, §§ 1-6, 8; 2006, ch. 865, § 1; 2007, ch. 150, §§ 1-3; 2007, ch. 203, § 1; 2007, ch. 258, § 1; 2007, ch. 342, § 1; 2007, ch. 492, § 1; 2008, ch. 634, § 2; 2008, ch. 649, § 1; 2008, ch. 653, § 1; 2008, ch. 713, § 1; 2008, ch. 784, § 1; 2009, ch. 49, § 1; 2009, ch. 98, § 1; 2009, ch. 109, § 1; 2009, ch. 168, § 1; 2009, ch. 266, §§ 1, 2; 2009, ch. 357, §§ 1, 2; 2009, ch. 572, §§ 1, 2; 2010, ch. 622, § 1; 2010, ch. 623, § 1; 2010, ch. 632, § 1; 2010, ch. 641, § 1; 2010, ch. 647, § 1; 2010, ch. 649, § 1; 2010, ch. 664, § 1; 2010, ch. 695, § 1; 2010, ch. 744, § 1; 2010, ch. 763, §§ 1-3; 2010, ch. 771, § 1; 2010, ch. 835, §§ 1-5; 2010, ch. 927, §§ 2, 3; 2010, ch. 1121, §§ 1-3; 2010, ch. 1133, §§ 2, 3; 2011, ch. 31, § 1; 2011, ch. 53, § 1; 2011, ch. 110, § 1; 2011, ch. 136, § 1; 2011, ch. 440, § 1; 2011, ch. 447, §§ 3-8, 11, 12; 2011, ch. 503, §§ 1, 2; 2012, ch. 661, § 1; 2012, ch. 790, §§ 1, 2; 2012, ch. 947, § 8; 2012, ch. 1005, §§ 1-3; 2012, ch. 1035, §§ 3, 4; 2012, ch. 1045, § 1; 2013, ch. 37, § 1; 2013, ch. 160, § 1; 2013, ch. 218, § 1; 2013, ch. 230, § 1; 2013, ch. 295, §§ 1, 2; 2013, ch. 371, § 1; 2013, ch. 458, §§ 1, 2; 2014, ch. 506, § 1; 2014, ch. 643, §§ 1-4; 2014, ch. 661, §§ 1, 2; 2014, ch. 843, §§ 1, 2; 2014, ch. 861, § 7; 2014, ch. 907, §§ 1, 3, 4; 2014, ch. 1001, §§ 1-5, 8, 10; 2015, ch. 70, § 1; 2015, ch. 116, § 1; 2015, ch. 119, § 1; 2015, ch. 269, § 4; 2015, ch. 279, § 1; 2015, ch. 336, §§ 2, 3; 2015, ch. 391, §§ 2, 3; 2015, ch. 428, § 2; 2015, ch. 446, § 1; 2015, ch. 458, §§ 1-5; 2016, ch. 791, §§ 1, 2; 2016, ch. 858, § 17; 2016, ch. 874, § 1; 2016, ch. 922, §§ 1-4; 2016, ch. 953, §§ 1-3; 2016, ch. 964, § 1; 2016, ch. 965, §§ 1, 2; 2016, ch. 1022, § 1; 2017, ch. 119, § 1; 2017, ch. 141, § 1; 2017, ch. 142, § 1; 2017, ch. 147, §§ 9-11; 2017, ch. 160, § 1; 2017, ch. 173, § 1; 2017, ch. 195, § 1; 2017, ch. 214, §§ 1-3; 2017, ch. 223, § 1. 2017, ch. 273, § 1; 2017, ch. 337, § 1; 2017, ch. 371, § 1; 2017, ch. 394, § 1; 2017, ch. 428, § 1; 2018, ch. 680, §§ 1, 2; 2018, ch. 740, §§ 1-4; 2018, ch. 755, § 4; 2018, ch. 785, § 1; 2018, ch. 787, § 1; 2018, ch. 812, § 1; 2018, ch. 847, § 1; 2018, ch. 860, §§ 1-3; 2018, ch. 912, § 1; 2018, ch. 950, §§ 1, 2; 2018, ch. 1010, §§ 1, 2.

Code Commission Notes. Acts 1994, ch. 550, § 2 purported to add the following language after the second sentence in (18): "Provided, further, when the public street within the Beale Street National Historic Landmark District is closed to motor vehicular traffic."

Compiler's Notes.

For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2005, ch. 212, § 6 provided that:

"(a) The commissioner of revenue shall promulgate rules and regulations to effectuate the provisions of this act.

"(b) The commissioner of economic and community development shall promulgate rules and regulations to effectuate the provisions of this act.

"(c) The executive director of the alcoholic beverage commission shall promulgate rules and regulations to effectuate the provisions of this act.

"(d) All such rules and regulation shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5."

Acts 2009, ch. 168, § 2 provided that for purposes of § 57-4-301, the annual taxes imposed for an historic inn shall be equal to the tax assessed for an historic mansion house site.

Pursuant to Article III, Section 18 of the Constitution of Tennessee, Acts 2014, ch. 843 took effect on April 28, 2014.

Acts 2018, ch. 755 contained two act sections 4. One of which amended this section and the other was the effective date provision.

Acts 2018 ch. 950, § 1 purported to amend the definition of "premier type tourist resort" with provisions exactly the same as the provisions by Acts 2018, ch. 860, § 3; therefore, the amendments to this section by ch. 950, § 1 were not given effect.

Amendments.

The 2018 amendment by ch. 680 added (WWWW) and (XXXX) in the definition of "premier type tourist resort".

The 2018 amendment by ch. 740 added (B) in the definition of "bed and breakfast establishment"; and added (YYYY), (ZZZZ), (AAAAA) and (BBBBB) in the definition of "premier type tourist resort".

The 2018 amendment by ch. 755 added the definition of "festival operator".

The 2018 amendment by ch. 785 added (CCCCC) in the definition of "premier type tourist resort".

The 2018 amendment by ch. 787 added (DDDDD) in the definition of "premier type tourist resort".

The 2018 amendment by ch. 812 added (P) in the definition of "urban park center".

The 2018 amendment by ch. 847 added (EEEEE) and (FFFFF) in the definition of "premier type tourist resort".

The 2018 amendment by ch. 860 added (GGGGG)-(IIIII) in the definition of "premiere type tourist resort".

The 2018 amendment by ch. 912 added (JJJJJ) and (KKKKK) in the definition of "premiere type tourist resort".

The 2018 amendment by ch. 950 added (LLLLL) in the definition of "premiere type tourist resort".

The 2018 amendment by ch. 1010 added (C) and (D) in the definition of "Sports authority facility".

Effective Dates.

Acts 2018, ch. 680, § 3. April 12, 2018.
Acts 2018, ch. 740, § 5. April 18, 2018.
Acts 2018, ch. 755, § 4. April 18, 2018.
Acts 2018, ch. 785, § 2. April 20, 2018.
Acts 2018, ch. 787, § 2. April 20, 2018.
Acts 2018, ch. 812, § 2. July 1, 2018.
Acts 2018, ch. 847, § 2. April 26, 2018.
Acts 2018, ch. 860, § 4. May 3, 2018.
Acts 2018, ch. 912, § 2. May 1, 2018.
Acts 2018, ch. 950, § 3. May 15, 2018.
Acts 2018, ch. 1010, § 4. May 21, 2018.

Cross-References.

Certain 1987 amendments to section inapplicable to certain counties, § 57-4-104.

Limitation on selling or giving away alcoholic or malt beverages during certain hours, § 57-4-203.

Law Reviews.

Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

Attorney General Opinions.

Discrimination, OAG 89-73 (5/3/89).

Premiere type tourist resorts, licenses, OAG 94-81 (7/22/94).

Nashville and Davidson County arena within definition of "convention center," OAG 95-016 (3/16/95).

Implementation of Tennessee River Resort District Act, OAG 05-161 (10/18/05).

Licensing and taxation of hotels selling alcohol for consumption on the premises. OAG 16-05, 2016 Tenn. AG LEXIS 3 (2/9/2016).

NOTES TO DECISIONS

1. Clubs.

A club which has a license for on-premises consumption of alcoholic beverages and beer from the alcoholic beverage commission under §§ T.C.A. 57-4-101(b) [now § 57-4-101(a)(2)] and 57-4-102 does not have an absolute right to a beer permit from a city beer board. State ex rel. Amvets Post 27 v. Beer Bd. of Jellico, 717 S.W.2d 878, 1986 Tenn. LEXIS 794 (Tenn. 1986).

57-4-103. Applicability of chapter — Referendum — Form of question.

(a)(1) This chapter shall be effective in any jurisdiction which authorizes the sale of alcoholic beverages for consumption on the premises in a referendum in the manner prescribed by § 57-3-106; provided, that, in addition to any other method authorized for holding an election pursuant to § 57-3-106, an election may be held for such sales upon adoption of a resolution by a two-thirds (⅔) vote of the legislative body of a county or municipality.

(2)(A) Except as provided in subdivision (a)(2)(B), if the county election commission receives the necessary resolution or the petition requesting the referendum not less than forty five (45) days before the date on which an election is scheduled to be held, except for referenda scheduled to be

held with the regular November general election which shall be held pursuant to § 2-3-204, the county election commission shall include the referendum question contained in subsection (b) on the ballot.

(B) In counties having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000), according to the 1990 federal census or any subsequent federal census, if the county election commission receives the necessary petition requesting the referendum not less than thirty (30) days before the date on which an election is scheduled to be held, the county election commission shall include the referendum question contained in subsection (b) on the ballot.

(3) If any county has authorized the sale of alcoholic beverages for sale for consumption off premises pursuant to § 57-3-106, then any municipality wholly or partially within the boundaries of the county may conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of the municipality.

(4)(A) If a municipality which has created a tourism development zone as defined in § 7-88-103 has not authorized the sale of alcoholic beverages for consumption on the premises in a referendum, then such municipality is authorized to conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of such municipality in accordance with this subdivision (a)(4). Notwithstanding § 57-3-106(c) and (f)(2), the county election commission shall place the question on the ballot of the November 2012, general election; provided, that all costs associated with the referendum election shall be paid for by the municipality to which this subdivision (a)(4) applies.

(B) The question submitted to the voters shall be in the following form for this election:

For legal sale of alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

Against legal sale alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

(5) When a municipality is located partly within a county that has a metropolitan form of government and the county has approved sales of alcoholic beverages for consumption on the premises and partly within another county that has not approved sales of alcoholic beverages for consumption on the premises, a referendum in the municipality shall be held only in that portion of the municipality located in the county that has not approved sales of alcoholic beverages for consumption on the premises. The referendum result shall not affect the sale of alcoholic beverages for consumption on the premises in the portion of the municipality located in the county having a metropolitan form of government.

(6) If any municipality located in any county having a population of not less than sixty-six thousand two hundred (66,200) nor more than sixty-six thousand three hundred (66,300), according to the 2010 federal census or

any subsequent federal census, has authorized the sale of alcoholic beverages for consumption on the premises in a referendum in the manner prescribed by § 57-3-106, then any municipality having a population of not less than eight hundred fifty-five (855) nor more than eight hundred sixty-five (865) located within the boundaries of such county may conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of such municipality, notwithstanding the population requirements of § 57-3-101(a)(13) or § 57-3-106(b)(1). The referendum shall be conducted in the manner prescribed by § 57-3-106.

(7) If any municipality located in any county having a population of not less than twenty-nine thousand four hundred (29,400) nor more than twenty-nine thousand five hundred (29,500), according to the 2010 federal census or any subsequent federal census, has authorized the sale of alcoholic beverages for consumption on the premises in a referendum in the manner prescribed by § 57-3-106, then any municipality having a population of not less than five hundred thirty (530) nor more than five hundred thirty-nine (539), according to the 2010 federal census or any subsequent federal census, located within the boundaries of such county, may conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of such municipality, notwithstanding the population requirements of § 57-3-101(a)(14) or § 57-3-106(b)(1). The referendum shall be conducted in the manner prescribed by § 57-3-106.

(8) If any municipality located in any county having a population of not less than forty-one thousand eight hundred (41,800) nor more than forty-one thousand nine hundred (41,900), according to the 2010 federal census or any subsequent federal census, has authorized the sale of alcoholic beverages for consumption on the premises in a referendum in the manner prescribed by § 57-3-106, then any municipality having a population of not less than four hundred sixty (460) nor more than four hundred seventy (470), according to the 2010 federal census or any subsequent federal census, located within the boundaries of such county, may conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of such municipality, notwithstanding the population requirements of § 57-3-101(a)(14) or § 57-3-106(b)(1). The referendum must be conducted in the manner prescribed by § 57-3-106.

(9) If any municipality located in any county having a population of not less than sixty-six thousand two hundred (66,200) nor more than sixty-six thousand three hundred (66,300), according to the 2010 federal census or any subsequent federal census, has authorized the sale of alcoholic beverages for consumption on the premises in a referendum in the manner prescribed by § 57-3-106, then any municipality having a population of not less than three hundred ten (310) nor more than three hundred nineteen (319), according to the 2010 federal census or any subsequent federal census, located within the boundaries of such county, may conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of such municipality, notwithstanding the population requirements of § 57-3-101(a)(14) or § 57-3-106(b)(1). The referendum must be conducted in the manner prescribed by § 57-3-106.

(b) At any such election, the only question submitted to the voters shall be in the following form:

For legal sale of alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

Against legal sale of alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

History.

Acts 1967, ch. 211, § 4; 1971, ch. 59, § 1; 1972, ch. 510, § 1; 1975, ch. 71, §§ 1, 2; 1977, ch. 445, § 1; modified; T.C.A., § 57-164; Acts 1984, ch. 877, § 1; 1987, ch. 456, § 2; 1988, ch. 551, § 1; 1992, ch. 711, § 1; 1993, ch. 518, §§ 18, 21; 1998, ch. 618, § 2; 2005, ch. 262, § 1; 2006, ch. 607, § 1; 2007, ch. 52, § 1; 2008, ch. 778, §§ 1, 2; 2011, ch. 447, §§ 9, 10; 2012, ch. 1035, §§ 1, 2; 2015, ch. 201, § 2; 2018, ch. 692, § 2; 2018, ch. 891, § 2.

Compiler's Notes.

For tables of population of Tennessee municipalities, and for U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2006, ch. 607, § 1 provided that, notwithstanding the provisions of § 57-3-106(c) requiring elections to be held at the next regular election of the municipality, the county election commission shall place the question on the ballot of the November 2006 general election; provided, that the municipal governing body of the municipality to which subdivision (a)(4) applies calls for the referendum by July 15, 2006; and provided further, that all costs associated with that referendum election shall be paid for by the calling municipality.

Amendments.

The 2018 amendment by ch. 692 added (a)(8).

The 2018 amendment by ch. 891 added (a)(9).

Effective Dates.

Acts 2018, ch. 692 § 3. April 9, 2018.

Acts 2018, ch. 891, § 3. May 3, 2018.

Textbooks.

Tennessee Jurisprudence, 6A Tenn. Juris., Constitutional Law, § 58.

Law Reviews.

Constitutional Law — Bemis Pentecostal Church v. State: The Validity of Tennessee's Campaign Disclosure Act, 18 Mem. St. U.L. Rev. 324 (1989).

Attorney General Opinions.

The 2005 amendment requires that the municipality's governing body act no later than the thirtieth day after the act takes effect. OAG 05-143 (9/20/05).

Consumption of alcoholic beverages on the premises in unincorporated areas of a county, OAG 09-011 (2/3/09).

NOTES TO DECISIONS

1. Constitutionality.

The legislature could have had a reasonable justification for including only certain counties and municipalities within T.C.A. § 57-4-103. Taylor v. Armentrout, 632 S.W.2d 107, 1981 Tenn. LEXIS 520 (Tenn. 1981).

57-4-104. Applicability of amendments to chapter.

The amendments to §§ 57-4-101, 57-4-102, 57-4-201, 57-4-203 and 57-4-301, made by Chapter 444 of the Public Acts of 1987, shall not apply in counties having a population of:

not less than	nor more than
11,700	11,800
24,590	24,600
34,800	34,900
67,300	67,400

according to the 1980 federal census or any subsequent federal census.

History.
Acts 1987, ch. 444, § 12.

Compiler's Notes.
For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Attorney General Opinions.
Brown bagging of liquor, OAG 89-113 (9/5/89).

57-4-105. Serving wine at art galleries.

Any art gallery that does not sell food or beverages and that receives ninety percent (90%) of its revenue from the sale of artwork may serve wine to patrons of such art gallery without a charge. Such art gallery shall not serve wine to a patron who is intoxicated or believed to be intoxicated. Notwithstanding any other law to the contrary, any art gallery permitted to serve wine under this section shall not be required to pay any fees or taxes related to the privilege of serving wine.

History.
Acts 2004, ch. 954, § 1.

Attorney General Opinions.
Participation of the municipality as a whole is required in a referendum to approve liquor by the drink, OAG 06-113 (7/19/06).

57-4-106. Authority to sell high alcohol content beer if authorized to sell wine.

If a premises is authorized pursuant to this chapter to sell wine only, the premises shall also be authorized to sell high alcohol content beer, as defined in § 57-3-101.

History.
Acts 2006, ch. 733, § 7; 2014, ch. 861, § 8.

57-4-107. Sales of alcoholic beverages for consumption on the premises in unincorporated areas of a county.

(a) Notwithstanding any other law to the contrary, sales of alcoholic beverages shall be permitted in unincorporated areas of a county that, by local option election in a county-wide referendum, approves the legal sale of alcoholic beverages for consumption on the premises, if that county has a charter form of government. This section shall apply to any such county that has already approved this referendum prior to June 5, 2009.

(b) In addition to the sales of alcoholic beverages authorized pursuant to subsection (a), notwithstanding any other law to the contrary, sales of alcoholic beverages shall be permitted in unincorporated areas of a county that approves the legal sale of alcoholic beverages for consumption on the premises by local option election called and held, in accordance with § 57-3-106(g), in portions of the county lying outside municipalities meeting the requirements of § 57-3-106(g)(1).

(c) If a county-wide referendum for the legal sale of alcoholic beverages for consumption on the premises is approved in a county, the sales of alcoholic beverages are permitted in any municipality that participated in the referen-

dum regardless of the minimum population requirement for a municipality in § 57-3-101.

History.
Acts 2009, ch. 351, § 1; 2011, ch. 411, § 1; 2011, ch. 447, § 1; 2017, ch. 147, § 20.

57-4-108. Production, storage and sale of infused alcohol products.

(a) As used in this title, "infusion" or "infused product" means any product created from the combining or mixing of an alcoholic beverage with nonalcoholic products or material over a sustained period of time, and at the time of the combination or mixing, the combination or mixture is not intended for immediate consumption.

(b)(1) Notwithstanding any law to the contrary, an establishment licensed to sell alcoholic beverages for on-premises consumption pursuant to this part may produce, store and sell infusions pursuant to this section.

(2) The commission may promulgate rules and regulations regarding the production, storage, and sale of infusions by any licensee in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) All alcoholic beverages used in the production of an infusion must be purchased from a licensed wholesaler.

(d) A batch of infused product shall not:

(1) Contain any added stimulant, drug, or illegal substance; provided, that "added stimulant":

(A) Means any stimulant used in the production of the infusion that is not naturally contained in any food product or beverage used in the production of the infusion; and

(B) Includes, but is not limited to, caffeine, guarana, ginseng, and taurine and any product or beverage which includes stimulants that are not naturally included in the product or beverage, including, but not limited to, energy drinks;

(2) Be removed or transported from the licensed premises; or

(3) Be infused in, stored in, or dispensed from an original package of liquor or wine, or a container bearing an alcoholic beverage name brand.

(e) A batch of infused product shall be labeled with a list of each ingredient contained in the infusion.

History.
Acts 2014, ch. 1001, § 9; 2017, ch. 338, §§ 1, 2.

Compiler's Notes.
Former § 57-4-108, concerning licenses that may continue to be issued for certain retail sales of alcoholic beverages for off-premises consumption, was transferred to § 57-3-219 in 2011 by the code commission.

57-4-109. Tasting of alcohol by qualified student — Criteria — Definitions.

(a) A qualified student may taste alcoholic beverages, and the student, the authorized instructor, and the qualified academic institution in which the student is enrolled shall not be subject to criminal prosecution under § 57-5-301, § 57-4-203, § 39-15-404 or title 39, chapter 17, part 7, if all of the

following criteria are met:

(1) The qualified student tastes the alcoholic beverage while enrolled in a qualified academic institution;

(2) The qualified academic institution has established a bachelor's degree program that is designed to train industry professionals in the production of fermented or distilled food or beverage products;

(3) The qualified student tastes the alcoholic beverage for educational purposes as part of the instruction in a course required for the bachelor's degree; and

(4) The alcoholic beverage remains in the control of an authorized instructor of the qualified academic institution who is at least twenty-one (21) years of age.

(b) Nothing in this section shall be construed to allow a student under twenty-one (21) years of age to receive any alcoholic beverage unless it is delivered as part of the student's curriculum requirements.

(c) A license or permit is not required to be held by a qualified academic institution engaging in the activities authorized by this section; provided, that an extra fee or charge is not imposed for the alcoholic beverages being tasted. Any tuition normally charged for a course shall not be considered an extra fee or charge.

(d) As used in this section:

(1) "Alcoholic beverage" includes beer as defined in § 57-5-101;

(2) "Qualified academic institution" means a public or private university accredited by a commission recognized by the United States department of education;

(3) "Qualified student" means a student enrolled in a fermentation science degree program at a qualified academic institution who has completed a minimum of sixty (60) hours of coursework; and

(4) "Taste" means to draw an alcoholic beverage into the mouth, but does not include swallowing or otherwise consuming the alcoholic beverage.

History.
Acts 2016, ch. 709, § 1.

57-4-110. Interest of licensed manufacturer in licensed establishment. [Effective until July 1, 2019.]

(a) Notwithstanding any law or rule to the contrary, a manufacturer licensed under § 57-3-202 may have a direct or indirect interest in any establishment licensed pursuant to this part; provided, that such interest is held in an irrevocable trust by an independent trustee.

(b) This section is deleted on July 1, 2019, and shall no longer be effective on and after such date.

History.
Acts 2017, ch. 371, § 3.

PART 2

ADMINISTRATION, ENFORCEMENT, PROHIBITED ACTS

57-4-201. Alcoholic beverage commission to administer law — Permits — Procedure — Rules and regulations.

(a)(1) The commission created pursuant to chapter 1 of this title, has the authority to administer parts 1-3 of this chapter.

(2) The commission shall make regulations, not inconsistent with this chapter, for clarifying, interpreting, carrying out and enforcing the terms of this chapter, for ensuring the proper and orderly conduct of business by licensees, and for regulating all advertising of alcoholic beverages by licensees.

(3) Expiration of the licenses granted pursuant to this chapter shall be as provided by § 57-3-213(a), (b) and (c).

(4) Further, all the provisions of §§ 57-3-214 and 57-3-404(a) and (b), shall apply to licensees under this chapter.

(b)(1) Any person, firm or corporation owning any hotel, convention center, premier type tourist resort, restaurant, club, historic performing arts center, community theater, theater, historic interpretive center, urban park center, zoological institution, public aquarium, museum, historic mansion house site or commercial passenger boat company as defined in § 57-4-102, desiring to sell wine or other alcoholic beverages for consumption on its premises where food may be served, shall make application to the commission in duplicate on forms furnished by the commission for a permit so to do. The commission is authorized to issue a limited permit to a restaurant making application under § 57-4-101(c)(1), authorizing such restaurant to serve wine but not any other alcoholic beverages. Notwithstanding § 57-3-803, the commission is authorized to issue a limited license to a retail food store authorizing a restaurant within a retail food store to serve wine but no other alcoholic beverages within a designated area within the retail food store. A retail food store may receive a restaurant license under this section without complying with seating requirements or requirements regarding minimum food sales for a wine only licensee as long as the retail food store provides prepared food for sale to customers and pays a license fee equal to the license fee in § 57-4-301(b)(1)(R)(vii). Any person, firm or corporation desiring to sell wine or other alcoholic beverages for consumption on the premises of any terminal building of a commercial air carrier airport as defined in § 57-4-102, or of a commercial airline travel club as defined in § 57-4-102, or of a sports authority facility as defined in § 57-4-102, shall make application to the commission in duplicate on forms furnished by the commission for a permit to do so. No person, firm or corporation shall be authorized to engage in making such sales until the permit therefor is approved and issued by the commission.

(2) No license may be granted hereunder to any establishment when any person, firm or corporation having at least a five percent (5%) ownership

interest in the establishment has been convicted within ten (10) years prior to the application for a license hereunder of a violation of the laws governing the sale or manufacture of alcoholic beverages or of any felony.

(3)(A) If a license has been issued to an establishment as a restaurant pursuant to § 57-4-102 and such licensee desires to exchange its license as a restaurant for a license as a limited service restaurant, the commission may issue the establishment a license as a limited service restaurant in accordance with Chapter 1133 of the Public Acts of 2010, upon the filing of an application by the licensee for the issuance of a license as a limited service restaurant, together with the payment of the application fee required pursuant to § 57-4-301(b)(1) and a sworn statement indicating the gross revenue from the previous year derived from food sales and the gross revenue derived from liquor sales, and, if approved, paying the license fee, or the prorated difference between its restaurant license fee and the license fee, if applicable, required pursuant to § 57-4-301(b)(1)(W). Such statement shall determine the appropriate license fee to be paid. It is the intent that on-premises licenses permitting the sale of alcoholic beverages at restaurants shall not be required to fulfill any other requirements in order to be issued a license to serve alcoholic beverages as a limited service restaurant.

(B) Should the commission find that any restaurant fails to satisfy the requirements of § 57-4-102(30)(A) but would otherwise qualify as a limited service restaurant, such establishment shall be permitted thirty (30) days following such finding to elect to exchange its license for a limited service restaurant license upon paying to the commission a new application fee and the prorated difference between its restaurant license fee and the license fee required pursuant to § 57-4-301(b)(1)(X).

(C) For purposes of exchanging a restaurant license as a limited service restaurant license, if the licensee had been issued a license by the alcoholic beverage commission as a restaurant, the initial license fee shall be based on the percentage of gross sales the establishment generated from the service of meals during the year previous to the year the license as a limited service restaurant is requested.

(D) Any establishment applying for a renewal of its license shall submit a sworn statement indicating the gross revenue from the previous year derived from food sales and the gross revenue derived from liquor sales. Such statement shall determine the license fee to be paid pursuant to § 57-4-301(b)(1)(X).

(E)(i) If a license is requested by an applicant who does not hold an existing license as a restaurant, it shall be a rebuttable presumption that the amount of gross sales from prepared food will be between zero percent (0%) but not more than fifteen percent (15%). An applicant may rebut the presumption by including with the application a business plan which indicates the gross sales from prepared food will be higher than fifteen percent (15%). The commission shall advise each applicant of the applicant's right to include with the application a business plan which includes a projection of the amount of gross sales of prepared food and in such case, the commission shall assess the appropriate license fee based on such projection.

(ii) Any establishment applying for a renewal of its license as a limited service restaurant shall submit a sworn statement indicating the percentage of gross revenue for the previous year derived from food sales and the gross revenue derived from sales of alcoholic beverages. If the statement indicates the gross sales from prepared food was higher than the initial projection or higher than the amount actually sold in the previous year, requiring the payment of a lower licensure fee, the commission shall refund the difference to the licensee within thirty (30) days of the date the statement is filed with the commission. If the statement indicates the gross sales from prepared food was less than the projection or than the amount actually sold in the previous year, requiring the payment of a higher licensure fee, the commission shall require the licensee to pay to the commission the difference between the licensure fee actually paid at the time the renewal fee is paid.

(c)(1) Any club seeking to obtain a license under this chapter shall, as a condition precedent to its obtaining such license, cause to be printed in a newspaper of general circulation in the county or municipality where such club is located a public notice that the club is seeking a license from the commission to sell liquor by the drink. The notice shall include the name and address of each officer of such club, the address of the location of the club, an indication of the number of regular dues paying members, and the name and address of the individual to be in actual charge of the sale of alcoholic beverages. The commission is authorized to promulgate rules and regulations further establishing the content and format of such notice.

(2) Any club seeking to obtain a license under this chapter shall submit with its application a certificate signed by the county mayor or chair of the county commission in which the club is located if outside the corporate limits of a municipality or, if within a municipality, from the mayor or a majority of the commission, city council or legislative body of the municipality by whatsoever name designated, or if the municipality has no mayor, from the highest executive of the municipality. The certificate must state that the persons to be in actual charge of the sale of alcoholic beverages are of good moral character and are personally known to the official or officials signing the certificate, or that such official or officials have made careful investigation of the person's or persons' general character, and from such investigation it is found to be good. In the event the club is unable to obtain such certificate from the proper certifying official, the applicant shall file with the commission with the applicant's application a petition in duplicate stating that the applicant has made application to the certifying official for the certificate and same has been wrongfully, illegally or arbitrarily refused, and otherwise setting forth reasons why the applicant is entitled to such license, notwithstanding the refusal aforementioned, and the manner in which the refusal is wrongful, illegal or arbitrary. The commission shall hold a hearing to determine whether the license shall be issued. The hearing shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commission shall make such order granting or refusing the license as, in its discretion, the entire record at such hearing shall justify, and such order shall be effective from its date.

(3) This subsection (c) shall not be applicable to any club having a license on May 1, 1980, or to the renewal of a license for such club.

(d) The commission shall have authority to require an applicant, under oath, to disclose the following information:

(1) The name of the applicant;

(2) Location of the hotel, convention center, premier type tourist resort, restaurant, club, historic performing arts center, community theater, theater, historic interpretive center, urban park center, zoological institution, public aquarium, museum, historic mansion house site, terminal building of a commercial air carrier airport, commercial airline travel club, commercial passenger boat company, or sports authority facility;

(3) Sufficient data to establish that applicant meets the requirements of §§ 57-3-110, 57-4-101, 57-4-102;

(4) The true owner thereof;

(5) That neither the applicant nor any person to be employed in the serving of beverages authorized herein shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture or transportation of intoxicating liquor or of any felony within eight (8) years prior to the application for a license hereunder;

(6) That the manager and/or operator of the hotel, convention center, premier type tourist resort, restaurant, club, zoological institution, public aquarium, museum, community theater, theater, historic interpretive center, historic performing arts center, establishment in a terminal building of a commercial air carrier airport, commercial airline travel club, commercial passenger boat company, or sports authority facility seeking such permit is of good moral character; and

(7) Such other relevant information as may be required by the commission.

(e) The commission is authorized to promulgate rules and regulations governing its procedure but it shall consider all applications promptly.

(f)(1) Notwithstanding any provision of this title to the contrary, an entity that holds a license to manufacture high alcohol content beer issued by the commission shall be authorized to sell on its premises beer or high alcohol content beer which has been brewed on such premises, for consumption on its premises without the requirement of an additional license under this part. Any sale of high alcohol content beer by such manufacturer or brewery shall be subject to the tax imposed by § 57-4-301(c).

(2) Any manufacturer or brewery electing to effect sales of beer or high alcohol content beer for consumption on its premises must advise the commission as to the designated area where such sales will occur and shall be subject to the conditions of § 57-4-203 for such sales, except such manufacturer or brewery may effect sales for off-premises consumption pursuant to § 57-3-202(h).

(g) Notwithstanding any law or rule to the contrary, upon collection of a fifty-dollar licensing fee, the commission may issue temporary licenses not to exceed thirty (30) days to any new applicant for a license issued pursuant to this chapter.

History.

Acts 1967, ch. 211, § 1; 1970, ch. 451, § 1; 1972, ch. 682, § 3; 1972, ch. 756, § 4; 1979, ch. 401, § 3; T.C.A., § 57-154; Acts 1980, ch. 895, § 2; impl. am. Acts 1980, ch. 898, § 1; Acts 1981, ch. 232, § 1; 1981, ch. 447, § 1; 1981, ch. 475, §§ 3, 4; 1983, ch. 52, §§ 3-5; 1983, ch. 300, § 4; 1983, ch. 469, §§ 3-5; 1984, ch. 975, §§ 3-5; 1986, ch. 643, § 1; 1986, ch. 899, §§ 4-6; 1987, ch. 444, §§ 5-7; 1991, ch. 219, § 3; 1992, ch. 674, §§ 3-5; 1998, ch. 939, §§ 4, 5; 2001, ch. 74, § 3; 2003, ch. 90, § 2; 2010, ch. 1133, § 5; 2011, ch. 448, § 14; 2012, ch. 947, § 1; 2014, ch. 861, § 24; 2014, ch. 915, § 2; 2015, ch. 391, § 1; 2016, ch. 830, § 2.

Compiler's Notes.

Acts 1983, ch. 300, § 6 provided that the amendment by that act inserting "historic mansion house site" shall apply only to counties having a population of 450,000 or greater according to the 1980 federal census or any subsequent census.

Acts 2003, ch. 90, § 2 directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Cross-References.

Certain 1987 amendments to section inapplicable to certain counties, § 57-4-104.

Law Reviews.

Selected Tennessee Legislation of 1986, 54 Tenn. L. Rev. 457 (1987).

Attorney General Opinions.

As a municipal corporation the city of Clarksville cannot obtain a license to sell liquor by the drink at any location or sell alcoholic beverages or beer to either private party lessees and guests or to the general public; no city employee or nonprofit corporation created or controlled by the city may obtain a permit to sell liquor by the drink or obtain a beer permit on behalf of the city. OAG 14-03, 2014 Tenn. AG LEXIS 5 (1/9/14)

Licensing and taxation of hotels selling alcohol for consumption on the premises. OAG 16-05, 2016 Tenn. AG LEXIS 3 (2/9/2016).

57-4-202. Revocation or suspension of permits — Pilot project concerning local and municipal beer boards.

(a) The commission shall have authority to revoke or suspend any permit granted herein for the violations of any applicable provision of this chapter, and any person aggrieved by the action of this commission in revoking or suspending a permit, or in refusing to grant a permit, may have such action reviewed as provided by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b)(1) As a pilot project to terminate July 1, 2014, unless extended by the general assembly, if, pursuant to § 57-5-108(n), a local or municipal beer board responsible for controlling the sale of beer or malt beverages within any county included within subsection (d), sends a certified letter, return receipt requested to the executive director of the alcoholic beverage commission providing notice that the beer board has suspended or revoked the permit of an establishment for a violation of chapter 5 of this title, upon receipt of the certified letter, the executive director of the alcoholic beverage commission shall:

(A) Schedule a show-cause hearing for the next regularly scheduled meeting of the commission to be held at least fourteen (14) days following the date the executive director receives the certified letter to provide an opportunity for the licensee to appear and show cause why the license to sell alcoholic beverages on the premises should not be suspended or revoked for violations of this chapter based on actions taken by the beer board pursuant to § 57-5-108(n); and

(B) Notify the individual or business entity, which is listed as the licensee at the same location where the beer permit had been suspended or revoked, of the date and time of the show-cause hearing.

(2) If the alcoholic beverage commission finds that a sufficient violation or violations of this chapter have occurred at such location, then the commission shall suspend or revoke the license of the establishment to the same extent and at least for the same period of time as the beer board has suspended or revoked the permit of the establishment pursuant to § 57-5-108(n).

(3) If the licensee fails to appear or decides to surrender the license to the alcoholic beverage commission in lieu of appearing at the show-cause hearing, the license shall be suspended or revoked by the commission, and no license to sell alcoholic beverages on the premises shall be issued by the commission to any person for the location where the beer board suspended or revoked the license or permit pursuant to § 57-5-108(n) for the period of time included in the decision of the beer board.

(4) Notwithstanding § 57-1-201(b)(1), the alcoholic beverage commission shall not have the authority to and shall not issue a fine in lieu of suspending or revoking the license of an establishment whose license had been suspended or revoked by the beer board pursuant to § 57-5-108(n).

(5) The decision of the alcoholic beverage commission is final, and any party aggrieved thereby may appeal the decision of the commission in accordance with the Uniform Administrative Procedures Act.

(c)(1)(A) As a pilot project to terminate July 1, 2014, unless extended by the general assembly, when the alcoholic beverage commission suspends the license to sell alcoholic beverages on the premises at any establishment within any county included within subsection (d), for any violation or violations, as defined in this chapter, the commission is authorized to notify the local or municipal beer board responsible for controlling the sale of beer or malt beverages within such county by certified mail, return receipt requested, of the action taken by the commission. Such notice shall include the record of evidence and the determination made by the alcohol beverage commission in suspending or revoking the license.

(B) Upon receipt of such notice, the local or municipal beer board shall take the actions required pursuant to § 57-5-108(o) with respect to violations as defined in chapter 5 of this title related to the permit for the sale of beer or malt beverages for consumption on the premises at the location where the violation of this chapter occurred.

(2) The suspension or revocation decision of the commission made pursuant to subdivision (c)(1)(A) is final, and any party aggrieved thereby may appeal the decision of the commission in accordance with the Uniform Administrative Procedures Act.

(d) The pilot project established by subsections (b) and (c) shall only apply in

counties having a population, according to the 2010 federal census or any subsequent federal census, of:

not less than	nor more than
6,800	6,900
19,100	19,150
22,600	22,675
32,200	32,300
35,600	35,700
51,400	51,500
56,800	56,900
336,400	336,500
432,200	432,300

(e) The executive director of the alcoholic beverage commission shall file a report with the state and local government committee of the senate and the state government committee of the house of representatives no later than March 15, 2014, on the success or failure of the pilot project created pursuant to subsections (b) and (c) and § 57-5-108(n) and (o), together with the executive director's recommendations as to whether the pilot project should be extended, continued or terminated and recommendations for legislative action, if any are required, based on the executive director's findings. The report, at a minimum, shall contain:

(1) The number of permits or licenses suspended or revoked;

(2) Whether such suspensions or revocations were appealed;

(3) The extent to which a court upheld or overturned such suspensions or revocations;

(4) Whether licensees or permittees surrendered their license or permit in lieu of having a license suspended or revoked;

(5) Whether a new license or permit was issued to the same person or business entity for a new or the same location, if such person or business entity had previously surrendered a license or permit in accordance with subdivision (e)(4); and

(6) The effect the implementation of the pilot project had on the activities of the establishments holding licenses and permits issued by the alcoholic beverage commission or the local or municipal beer board responsible for controlling the sale of beer within the locality impacted by the pilot project.

History.

Acts 1967, ch. 211, § 1; 1979, ch. 374, §§ 1, 2; T.C.A., §§ 57-152, 57-155; Acts 2012, ch. 881, § 2; 2013, ch. 236, § 68.

Compiler's Notes.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

57-4-203. Prohibited practices — Hours of sale — Authority of commission — Penalties.

(a) **Exterior Signs.**

(1) No licensee shall place any sign of any description on the exterior of the licensee's hotel, convention center, premier type tourist resort, restaurant, or club which is not in compliance with all duly adopted local

ordinances relative to such exterior signs.

(2) A violation of subdivision (a)(1) is a Class C misdemeanor.

(b) **Sales to Minors Prohibited.**

(1)(A) Any licensee or other person who sells, furnishes, disposes of, gives, or causes to be sold, furnished, disposed of, or given, any alcoholic beverage to any person under twenty-one (21) years of age commits a Class A misdemeanor and shall be punished in accordance with § 39-15-404, as well as any other applicable section.

(B) Any licensee engaging in business regulated hereunder or any employee thereof who sells, furnishes, disposes of, gives, or causes to be sold, furnished, disposed of, or given any beer or malt beverage as defined in § 57-6-102 to any person under twenty-one (21) years of age is guilty of a Class A misdemeanor.

(C) The commission may, upon finding that a licensee has violated subdivision (b)(1)(A) or (b)(1)(B) two (2) or more times during any two-year period, and for good cause shown, fine the licensee not more than ten thousand dollars ($10,000) and require retraining of all employees of the licensee under the supervision of the commission in lieu of suspending or revoking the license of the licensee.

(2) Any person under the age of twenty-one (21) years who:

(A) Purchases, attempts to purchase, receives, or has in such person's possession in any public place, any alcoholic beverage, commits a Class A misdemeanor; or

(B) Knowingly makes a false statement or exhibits false identification to the effect that the licensee is twenty-one (21) years of age or older to any person engaged in the sale of alcoholic beverages for the purpose of purchasing or obtaining the same commits a Class A misdemeanor.

(i) If a person violating this subdivision (b)(2)(B) is less than eighteen (18) years of age, such person shall be punished by a fine of fifty dollars ($50.00) or not less than twenty (20) hours of community service work, which fine or penalty shall not be suspended or waived. The fine imposed by this subdivision (b)(2)(B)(i) shall apply regardless of whether the violator cooperates with law enforcement officers by telling them the place the alcohol was purchased or obtained or from whom it was purchased or obtained.

(ii) If the person violating this subdivision (b)(2)(B) is eighteen (18) years of age or older but less than twenty-one (21) years of age, such person shall be punished by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200) or by imprisonment in the local jail or workhouse for not less than five (5) days nor more than thirty (30) days. The penalties imposed by this subdivision (b)(2)(B)(ii) apply regardless of whether the violator cooperates with law enforcement officers by telling them the place the alcohol was purchased or obtained or from whom it was purchased or obtained.

(C)(i) In addition to any criminal penalty established by this section, a court in which a person younger than twenty-one (21) years of age is convicted of the purchase, attempt to purchase or possession of alcoholic beverages, or the making of a false statement or exhibition of false

identification for the purpose of purchasing or obtaining alcoholic beverages in violation of this section, shall prepare and send to the department of safety, driver control division, within five (5) working days of the conviction an order of denial of driving privileges for the offender.

(ii) The court and the department of safety shall follow the same procedures and utilize the same sanctions and costs for an offender younger than twenty-one (21) years of age but eighteen (18) years of age or older as provided in title 55, chapter 10, part 7, for offenders younger than eighteen (18) years of age but thirteen (13) years of age or older.

(3) This chapter does not prohibit any person eighteen (18) years of age or older from selling, transporting, possessing or dispensing alcoholic beverages in the course of such person's employment.

(c) **Other Prohibited Sales.**

(1) It is unlawful for any licensee or other person to sell or furnish any alcoholic beverage to any person who is known to be insane or mentally defective, or to any person who is visibly intoxicated, or to any person who is known to habitually drink alcoholic beverages to excess, or to any person who is known to be an habitual user of narcotics or other habit-forming drugs.

(2) A violation of subdivision (c)(1) is a Class A misdemeanor.

(d) **Hours of Sale.**

(1) Except as provided in subdivision (d)(5), hotels, clubs, zoological institutions, public aquariums, museums, motels, convention centers, restaurants, community theaters, theater, historic interpretive centers, sports authority facilities, and urban park centers, licensed as provided herein to sell alcoholic beverages, and/or malt beverages, and/or wine may not sell, or give away, alcoholic beverages and/or malt beverages and/or wine between the hours of three o'clock a.m. (3:00 a.m.) and eight o'clock a.m. (8:00 a.m.) on weekdays, or between the hours of three o'clock a.m. (3:00 a.m.) and twelve o'clock (12:00) noon on Sundays.

(2) Except as provided in subdivision (d)(5), hotels, motels and restaurants, licensed under § 57-4-102(27)(B) may not sell or give away alcoholic beverages, and/or malt beverages and/or wine between the hours of one o'clock a.m. (1:00 a.m.) and eight o'clock a.m. (8:00 a.m.) on weekdays or between the hours of one o'clock a.m. (1:00 a.m.) and twelve o'clock (12:00) noon on Sundays.

(3) Except as provided in subdivision (d)(5), establishments in a terminal building of a commercial air carrier airport and commercial airline travel clubs licensed as provided herein to sell alcoholic beverages, and/or malt beverages, and/or wine, may not sell, or give away, alcoholic beverages and/or malt beverages and/or wine between the hours of three o'clock a.m. (3:00 a.m.) and eight o'clock a.m. (8:00 a.m.) on weekdays or between the hours of three o'clock a.m. (3:00 a.m.) and twelve o'clock noon (12:00) on Sundays.

(4) Except as provided in subdivision (d)(5), licensees under § 57-4-102(28) may not sell or give away alcoholic beverages and/or malt beverages and/or wine between the hours of five o'clock a.m. (5:00 a.m.) and eight o'clock a.m. (8:00 a.m.) on weekdays or between the hours of five o'clock a.m.

(5:00 a.m.) and twelve o'clock (12:00) noon on Sundays.

(5) The commission is authorized to extend the hours of sale in the jurisdictions which have approved the sale of liquor by the drink by referendum; provided, however, that such extension of hours as well as § 57-5-301(b)(5) shall apply to Sunday sales of beer within the area of the county outside a municipality which approves liquor by the drink by referendum unless the county legislative body by a two-thirds (⅔) vote sets the hours for Sunday sales of beer in accordance with § 57-5-301(b)(1) to apply within such area. Upon petition by any licensee or group of licensees under this chapter, the commission may, after conducting a rule-making hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, adopt rules expanding the hours during which it is legal to sell or give away alcoholic beverages, malt beverages and wine, pursuant to this chapter. The commission is hereby directed to consider such factors as the hours of sales in contiguous states and the need to compete with jurisdictions elsewhere in the country for convention and tourism business. The governing body of any municipality or metropolitan government which has approved liquor by the drink by referendum may, at any time, opt out of any extension of hours adopted under this section by passage of a resolution. Further, any municipality or metropolitan government that has opted out may, at a later date, opt in by passage of a resolution.

(6) Except as provided in subdivision (d)(5), licensees under § 57-4-102(30)(J) and (K) shall not sell or give away alcoholic beverages, malt beverages, or wine between the hours of three o'clock a.m. (3:00 a.m.) and four o'clock a.m. (4:00 a.m.).

(e) **Restrictions on Sealed or Unsealed Packages, or Gifts.**

(1) No licensee hereunder shall sell any wine or other alcoholic beverage in any sealed or unsealed package to any patrons or customers for consumption off its premises. Notwithstanding the foregoing, a restaurant licensed under this chapter may permit a customer who purchases an unsealed package of wine in conjunction with a food purchase and consumes a portion of the wine on the premises to remove the partially filled package from the premises. In addition, a licensee holding a license issued pursuant to §§ 57-4-102(14) and (34) may sell and distribute alcoholic beverages and wine in unsealed containers to the occupant of a suite located within a sports authority facility or a convention center; provided, that such occupant is at least twenty-one (21) years of age, is authorized by the lessee of the suite to receive such alcoholic beverages and wine, and the alcoholic beverage or wine is not removed from the sports authority facility or convention center.

(2) A licensee shall not give away any such sealed package or any drink of wine or alcoholic beverage to any patron or customer; provided, that:

(A) A hotel licensed under this chapter may include as part of the accommodations to a registered guest the provision of up to four (4) seven hundred fifty milliliter (750 ml.) or smaller complimentary sealed packages of wine or alcoholic beverages for which all applicable taxes have been paid; and

(B) A licensee may serve a sample of wine to a patron or customer that does not exceed one ounce (1 oz.).

(3) The tax required by chapter 4, part 3 of this title shall be paid upon the normal sales price of any such packages of wines provided under this subsection (e).

(4) A restaurant or limited service restaurant may sell beer for consumption off premises upon meeting the requirements of § 57-5-101(c)(1)(B).

(f) **Method of Sale.** Sales of wine and alcoholic beverages by licensees hereunder shall be conducted in the same manner as the sale of food is regularly conducted by such hotels, convention centers, premier type tourist resorts, restaurants, or clubs, except that no curb service of such beverages is lawful.

(g) **Ownership of Alcoholic Beverages Sold.**

(1) It is a Class C misdemeanor for any licensee hereunder to sell or serve on the licensee's premises any wine or other alcoholic beverage unless such beverage is owned outright by the licensee.

(2) It is unlawful for any person, firm or corporation to sell wine or other alcoholic beverage as authorized herein without complying with the applicable provisions of this chapter.

(3) This subsection (g) shall not apply to events held by special occasion licensees who receive donated alcoholic beverages or beer.

(h) **Restrictions on Employment.** No entity holding a license issued pursuant to § 57-4-101 shall employ any person in the serving of beer, wine or other alcoholic beverages who does not possess a server permit from the commission. It is made the duty of the licensee to see that each person dispensing or serving alcoholic beverages, wine or beer in the licensee's establishment possesses such a permit, which permit must be on the person of such employee or on the premises of the licensed establishment and subject to inspection by the commission or its duly authorized agent when the employee is engaged in the performance of that employee's duties for the licensee.

(i) **Premises Must Be Licensed — Exception for Conventions, Social Gatherings and Catered Events.**

(1)(A) Except with respect to a caterer licensed under this chapter, it is unlawful for any person, firm, corporation, partnership, or association to allow the dispensing of alcoholic beverages except sacramental wines and beer, in any establishment unless such establishment is licensed under this title.

(B) A violation of subdivision (i)(1)(A) is a Class B misdemeanor.

(2) Bona fide conventions or meetings, however, may bring their own alcoholic beverages onto the licensed premises if the same beverages are served to delegates or guests without cost. All other provisions of this chapter shall be applicable to such premises. This section has no application to social gatherings in a private home or a private place which is not of a commercial nature or where goods or services may be purchased or sold or any charge or rent or other thing of value is exchanged for the use thereof, excepting it be for sleeping quarters. Nothing herein shall preclude the serving of alcoholic beverages to guests without cost in rooms or suites or banquet rooms of a hotel or club licensed pursuant to this chapter.

(3) A restaurant, hotel, or caterer holding a valid catering license may sell or distribute wine, beer, and other alcoholic beverages at social or commer-

cial events, catered by the restaurant, hotel, or caterer where the restaurant, hotel, or caterer is providing food service at such event; provided, that the restaurant, hotel, or caterer shall notify the commission as to the time, location and duration of the catered event before the commencement of the event. Nothing in this subdivision (i)(3) or chapter shall be interpreted to require a person who holds a valid caterer license under this chapter to also be licensed as a restaurant or hotel.

(j) **Penalties Invoked.**

(1) Any person, firm or corporation who violates any provision of parts 1 and 2 of this chapter is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000); and, in the discretion of the court, imprisoned not less than thirty (30) days, nor more than six (6) months, and each violation constitutes a separate offense.

(2) Any person, firm or corporation who shall sell wine or other alcoholic beverages for consumption on its premises except as authorized by parts 1 and 2 of this chapter is guilty of a misdemeanor and punishable as provided in this section.

(3) Upon conviction of a second offense under this chapter, the permit of any licensee so convicted shall be automatically and permanently revoked.

(4) Upon the second conviction of any person, firm, or corporation for violation of subdivision (b)(1), such person, firm, or corporation is guilty of a Class E felony. In addition, upon the second such conviction, the permit of such licensee shall be automatically and permanently revoked regardless of any other punishment actually imposed.

(k) **Purchases by Special Occasion Licensees.**

(1) No charitable, nonprofit or political organization possessing a special occasion license shall purchase for sale or distribution under such license any alcoholic beverages from any source other than a licensee under § 57-3-204. This subsection (k) shall not apply to homemade wine made in the Swiss tradition by a member or members of a special occasion permit holder issued a license pursuant to § 57-4-102(33)(D). The member may supply the wine notwithstanding the limitations of § 57-3-207(e).

(2) A charitable, nonprofit, or political organization, or any representative thereof, may accept donations of alcoholic beverages and beer from any licensee holding a license issued pursuant to § 57-3-202, § 57-3-203, § 57-3-204, § 57-3-207, § 57-3-605 or § 57-4-101; provided, that the charitable, nonprofit, or political organization serves or sells such alcoholic beverages and beer at an event conducted by the charitable, nonprofit, or political organization as a special occasion licensee.

(*l*) **Commercial Airline Travel Clubs.** A commercial airline travel club licensed under this chapter may provide complimentary drinks of wine and alcoholic beverages to its patrons, customers, and guests. Such commercial airline travel club must have a separate area, other than the gate and ticket areas, designated as a club area for use by its members. The tax required by part 3 of this chapter shall be paid upon the normal sales price of all such complimentary drinks of wine and alcoholic beverages provided under this subsection (*l*).

(m) **Discounts.** Nothing in this chapter shall prohibit a licensee from offering a discount in such manner as the licensee deems appropriate as long as the discount being offered is not below the cost paid by the licensee to purchase the alcoholic beverages from the retailer.

(n) **Restrictions on Certain Limited Service Restaurant Licensees.** Any establishment holding a license pursuant to § 57-4-301(b)(1)(W)(iv) shall not permit alcoholic beverages to be sold on sidewalks, streets, or alleys.

(o) **Extension of Credit by Wholesalers to Retailers.**

(1) No wholesaler licensed under § 57-3-203 shall be permitted to extend credit of any retailer licensed under § 57-4-101 unless pursuant to this subsection (o). All amounts due to any wholesaler from all sales to such retailers shall be due upon delivery of the product.

(2) Notwithstanding the limitations of subdivision (o)(1), wholesalers licensed under § 57-3-203 may extend credit to a retailer licensed under § 57-4-101 for a period not to exceed ten (10) days from the date of the delivery of the product; provided, the payment is effected by electronic funds transfer or escrow prepayment.

(3) It shall create a rebuttable presumption that a retailer licensed under § 57-4-101 is not financially responsible under § 57-3-104(c)(10) if the retailer fails to satisfy its obligations to any wholesaler in accordance with each wholesaler's credit terms twice within a twelve-month period. Upon being advised by any wholesaler licensed under § 57-3-203 twice within a twelve-month period that a retailer has failed to comply with the applicable credit terms, the commission shall set a hearing as soon as practicable at its next available meeting to determine whether the retailer can rebut the presumption created by this subdivision (o)(3). Upon a finding that the retailer is not financially responsible under § 57-3-104(c)(10), the commission may issue a fine, suspend or revoke the license, or make any other order it deems appropriate.

(4) Notwithstanding any law to the contrary, the commission is authorized to issue a citation in an amount not to exceed five hundred dollars ($500) per violation against any retailer licensed under § 57-4-101 if, upon investigation, the commission finds that the retailer has failed to satisfy its obligations to any wholesaler in accordance with each wholesaler's credit terms twice within a twelve-month period.

History.

Acts 1967, ch. 211, § 1; 1969, ch. 336, § 1; 1970, ch. 451, § 2; 1971, ch. 224, § 1; 1972, ch. 612, § 9; 1972, ch. 682, § 4; 1972, ch. 756, § 5; 1973, ch. 397; 1975, ch. 277, § 1; 1975, ch. 340, § 1; 1979, ch. 256, § 1; 1979, ch. 377, § 1; 1979, ch. 401, § 4; 1979, ch. 413, §§ 3, 4; T.C.A., § 57-156; Acts 1980, ch. 771, § 3; 1981, ch. 153, § 1; 1981, ch. 404, § 3; 1982, ch. 877, §§ 2, 3; 1983, ch. 454, §§ 2, 3; 1983, ch. 469, §§ 6, 7; 1984, ch. 569, § 1; 1984, ch. 975, §§ 6, 7; 1984, ch. 1006, § 3; 1986, ch. 697, § 1; 1986, ch. 788, § 1; 1986, ch. 899, §§ 7, 8; 1987, ch. 96, § 1; 1987, ch. 444, §§ 1, 8, 9; 1988, ch. 944, § 1; 1989, ch. 427, § 1; 1989, ch. 591, §§ 63, 111, 112, 113; 1991, ch. 407, §§ 1, 2; 1991, ch. 473, §§ 2, 3; 1992, ch. 674, §§ 6, 7; 1994, ch. 550, § 1; 1995, ch. 93, § 1; 1995, ch. 214, § 2; 1995, ch. 396, § 6; 1998, ch. 795, §§ 2, 3; 1998, ch. 939, § 6; 2000, ch. 819, §§ 1, 2; 2001, ch. 74, § 4; 2001, ch. 161, § 1; 2001, ch. 310, § 1; 2002, ch. 832, § 2; 2006, ch. 900, § 3; 2007, ch. 203, § 2; 2010, ch. 1009, § 6; 2011, ch. 231, § 1; 2012, ch. 947, § 5; 2012, ch. 968, §§ 7, 8; 2013, ch. 386, § 2; 2014, ch. 915, § 3; 2014, ch. 1001, § 6; 2014, ch. 1015, § 10; 2015, ch. 369, § 1; 2017, ch. 147, §§ 3-6; 2017, ch. 371, § 2; 2018, ch. 755, § 2.

Compiler's Notes.

The misdemeanor penalty provisions in subsections (g) and (j) may have been affected by the Criminal Sentencing Reform Act of 1989. See §§ 39-11-114, 40-35-110, 40-35-111.

The special penalty provisions for persons under 21 years of age provided for in subdivisions (b)(2)(B)(i) and (ii) may have been superseded by the amendment to subdivision (b)(2)(B) by Acts 1989, ch. 591, § 111, of the Criminal Sentencing Reform Act of 1989.

Acts 2010, ch. 1009 was repassed over the governor's veto on June 4, 2010.

Acts 2011, ch. 231, § 2 provided that the act, which amended subdivision (d)(5), shall apply to the Sunday sale hours of beer in any county where a liquor-by-the-drink referendum was approved by a municipality in an election held within twelve (12) months prior to May 20, 2011 and on or after May 20, 2011.

For the Preamble to the act concerning legislative intent as to payments between wholesalers and retailers of alcoholic beverages for on-premises consumption, see Acts 2015, ch. 369.

Acts 2018, ch. 755, which amended this section, contained two act sections 4. One of which amended § 57-4-102, and the other was the effective date provision.

Amendments.

The 2018 amendment rewrote (e)(2) which read: "(2) No licensee shall give away any such sealed package or any drink of wine or alcoholic beverage to any patron or customer; provided, that any hotel licensed under this chapter may include as part of the accommodations to a registered guest the provision of up to four (4) seven hundred fifty milliliter (750 ml.) or smaller complimentary sealed packages of wine or alcoholic beverages which must have all appropriate taxes paid upon them."

Effective Dates.

Acts 2018, ch. 755, § 4. April 18, 2018.

Cross-References.

Age of majority for purposes of purchasing, consuming, transporting alcoholic beverages, §§ 1-3-105, 1-3-113.

Alcohol-related injuries, title 57, ch. 10.

Certain 1987 amendments to section inapplicable to certain counties, § 57-4-104.

Eighteen-year-olds, legal responsibility, alcoholic beverage restrictions on persons under 21, § 1-3-113.

False representations by minors, §§ 57-3-412, 57-5-301.

Penalties for Class A, B and C misdemeanors, § 40-35-111.

Penalty for Class E felony, § 40-35-111.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 12.

Law Reviews.

One Too Many: Sellers, Servers Must Know "How Much Is Too Much" to Avoid Alcohol Related Injuries (Mike Faulk), 43 Tenn. B.J. 12 (2007).

Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

Attorney General Opinions.

Cosmetologists, application of alcoholic beverage regulations to, OAG 96-089 (7/24/96).

Applicability of local beer permit ordinance to liquor-by-the-drink license holders, OAG 99-098 (4/30/99).

In a county that has not approved liquor by the drink by means of a county-wide referendum, but in which several municipalities have approved liquor by the drink, the hours for the sale of beer in areas of the county outside of incorporated municipalities and within those municipalities that have adopted liquor by the drink will be those set for the sale of liquor by the drink by the alcoholic beverage commission; thus, beer sales in these areas of the county may begin as early as 10:00 a.m. on Sundays, and this starting time for beer sales is applicable to sales by stores for off-premises consumption, as well as sales for consumption on the premises, OAG 02-23 (2/27/02).

In a county that has not approved liquor by the drink by means of a county-wide referendum, but in which several municipalities have approved liquor by the drink, and in which one incorporated municipality that has approved liquor by the drink decides by resolution to "opt out" of the expanded time for Sunday liquor-by-the-drink sales in order to return to the previous starting time of 12:00 noon, the hours for the sale of beer in areas of the county outside of incorporated municipalities and within those other municipalities that have adopted liquor by the drink will be those set for the sale of liquor by the drink by the alcoholic beverage commission, and, therefore, beer sales in these areas of the county may begin as early as 10:00 a.m. on Sundays, OAG 02-23 (2/27/02).

A civic center could legally permit alcoholic beverages to be served during private engagements, so long as the service is provided by a restaurant, hotel or licensed caterer who complies with the requirements of T.C.A. §§ 57-4-101(i) and 57-4-203(i)(3), OAG 06-175 (12/8/06).

Hours for the sale of beer in a municipality located within a Tennessee River resort district. OAG 10-92, 2010 Tenn. AG LEXIS 98 (8/17/10).

Senate Bill 2415/House Bill 2027 of the 108th General Assembly (enacted as Public Chapter 1015), which requires liquor-by-the-drink licensees to make payment to wholesalers upon delivery of the product, does not violate equal protection under the United States or Tennessee Constitutions. OAG 14-61, 2014 Tenn. AG Lexis 63 (6/17/14).

NOTES TO DECISIONS

Analysis

1. Sales to Minors.
2. Civil Actions.
3. Gift of Beverages.
4. Jury Instructions.
5. Bar Patrons.

1. Sales to Minors.

The public policy of this state is to prevent minors from purchasing, possessing, or imbibing alcoholic beverages. Brookins v. Round Table, Inc., 624 S.W.2d 547, 1981 Tenn. LEXIS 503 (Tenn. 1981), superseded by statute as stated in, Biscan v. Brown, — S.W.3d —, 2003 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 15, 2003).

A cause of action exists against a vendor who sells alcoholic beverages to a minor, where harm results therefrom. Brookins v. Round Table, Inc., 624 S.W.2d 547, 1981 Tenn. LEXIS 503 (Tenn. 1981), superseded by statute as stated in, Biscan v. Brown, — S.W.3d —, 2003 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 15, 2003).

2. Civil Actions.

A person who has the capacity and judgment to act responsibly in his own behalf cannot recover damages where he actively contributes to the intoxication of another and the intoxication is the proximate cause of the injury that is the subject of the legal action. Brookins v. Round Table, Inc., 624 S.W.2d 547, 1981 Tenn. LEXIS 503 (Tenn. 1981), superseded by statute as stated in, Biscan v. Brown, — S.W.3d —, 2003 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 15, 2003).

The owner or operator of an establishment selling alcoholic beverages by-the-drink to the public may only be held liable for injuries proximately caused by serving alcoholic beverages to a person who is visibly intoxicated at the time the alcoholic beverages are served. Mitchell v. Ketner, 54 Tenn. App. 656, 393 S.W.2d 755, 1964 Tenn. App. LEXIS 165 (Tenn. Ct. App. 1964), superseded by statute as stated in, Worley v. Weigel's, — S.W.2d —, 1994 Tenn. App. LEXIS 726 (Tenn. Ct. App. Dec. 14, 1994); Brookins v. Round Table, Inc., 624 S.W.2d 547, 1981 Tenn. LEXIS 503 (Tenn. 1981), superseded by statute as stated in, Biscan v. Brown, — S.W.3d —, 2003 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 15, 2003); Knapp v. Holiday Inns, Inc., 682 S.W.2d 936, 1984 Tenn. App. LEXIS 3430 (Tenn. Ct. App. 1984).

In a wrongful death action predicated upon a common law dram shop cause of action, it will rarely be appropriate for the trial court to grant a summary judgment for the defendant owner of the establishment selling alcoholic beverages by-the-drink where the person causing the fatal accident had been served alcoholic beverages immediately prior to the accident. Knapp v. Holiday Inns, Inc., 682 S.W.2d 936, 1984 Tenn. App. LEXIS 3430 (Tenn. Ct. App. 1984).

The sale of alcoholic beverages by any licensee or other person who is visibly intoxicated makes the seller guilty of negligence per se and where injury results such negligence per se must be a proximate cause of the injury to be actionable. Kirksey v. Overton Pub, Inc., 739 S.W.2d 230, 1987 Tenn. App. LEXIS 2792 (Tenn. Ct. App. 1987).

Though the furnishing of intoxicants in violation of T.C.A. § 57-4-203 may be the proximate cause of an injury resulting from intoxication, yet even if that is the proximate cause, the plaintiff's action is barred nonetheless if he is guilty of proximate contributory negligence. Kirksey v. Overton Pub, Inc., 739 S.W.2d 230, 1987 Tenn. App. LEXIS 2792 (Tenn. Ct. App. 1987).

In an action by a minor plaintiff for injuries suffered in an auto accident against a restaurant that was guilty of negligence per se for serving her alcohol shortly before she drove, the plaintiff would be treated as an adult, and the fact that she was negligent per se in purchasing and consuming the beverages and in driving while intoxicated did not mean she was guilty of contributory negligence as a matter of law. In order to prevail, the restaurant had to show that plaintiff's negligence proximately caused or contributed to her injuries. Cook v. Spinnaker's of Rivergate, Inc., 878 S.W.2d 934, 1994 Tenn. LEXIS 63 (Tenn. 1994), rehearing denied, 878 S.W.2d 934, 1994 Tenn. LEXIS 164 (Tenn. 1994).

Sections 57-10-101 and 57-10-102 governing the liability of sellers of alcohol, rather than the duties imposed by criminal statutes, determine the civil liability of the seller. Worley v. Weigel's, Inc., 919 S.W.2d 589, 1996 Tenn. LEXIS 188 (Tenn. 1996), rehearing denied, — S.W.2d —, 1996 Tenn. LEXIS 255 (Tenn. 1996).

3. Gift of Beverages.

Fraternal organization officers, visitors and new members were deemed included within the prohibition of the gift of beverages to patrons or customers. Benevolent Protective Order of Elks, Lodge No. 1279 v. Olsen, 669 S.W.2d 654, 1984 Tenn. LEXIS 785 (Tenn. 1984).

4. Jury Instructions.

Trial court did not err in charging the jury that contributory negligence and assumption of the risk were proper defenses to plaintiffs' allegations that the defendants violated T.C.A. § 57-4-203. Kirksey v. Overton Pub, Inc., 804 S.W.2d 68, 1990 Tenn. App. LEXIS 678 (Tenn. Ct. App. 1990).

5. Bar Patrons.

Bar patron was not liable under T.C.A. § 57-4-203 for allegedly conspiring with bartenders

to serve another party stronger drinks. Kirksey v. Overton Pub, Inc., 804 S.W.2d 68, 1990 Tenn. App. LEXIS 678 (Tenn. Ct. App. 1990).

57-4-204. Prohibited sexual or pornographic conduct — Enforcement.

(a) In addition to the other duties imposed under this title, the commission is authorized to enforce subsections (b), (c), and (d); and upon violation of subsections (b), (c), and (d) by any person, firm or corporation licensed under this chapter, the commission shall revoke the privilege license of such violator.

(b) The following acts or conduct on licensed premises are deemed contrary to public policy, and therefore no license shall be held at any premises where such conduct or acts are permitted:

(1) To employ, use or allow any person in the sale or service of alcoholic beverages or malt beverages in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals;

(2) To employ, use or allow the services of any hostess or other person to mingle with the patrons while such hostess or other person is unclothed or in such attire, costume or clothing as described in subdivision (b)(1);

(3) To encourage or permit any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person;

(4) To permit any employee or person to wear or use any device or covering, exposed to view, which simulates the breast, genitals, anus, pubic hair or any portion thereof.

(c)(1) Conduct or acts on licensed premises in violation of this subsection (c) are deemed contrary to public policy, and therefore no license shall be held at any premises where such conduct or acts are permitted.

(2) Live entertainment is permitted on any licensed premises, except that:

(A) No licensee shall permit any person to perform acts of or acts which simulate:

(i) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

(ii) The touching, caressing or fondling of the breast, buttocks, anus or genitals; or

(iii) The displaying of the pubic hair, anus, vulva or genitals.

(B) Subject to subdivision (c)(2)(A), any entertainer who is employed in whole or in part by the licensee to dance at such licensee's premises shall perform only upon a stage at least eighteen inches (18″) above the immediate floor level and removed at least six feet (6′) from the nearest patron.

(3) No licensee shall permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.

(4) No licensee shall permit any person to remain in or upon the licensed premises who exposes to public view any portion of the person's genitals or anus.

(d) The following conduct or acts on licensed premises are deemed contrary to public policy, and therefore no license shall be held at any premises where

such conduct or acts are permitted:

(1) The showing of film, still pictures, electronic reproduction, or other visual reproductions depicting:

(A) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

(B) Any person being touched, caressed or fondled on the breast, buttocks, anus or genitals;

(C) Scenes wherein a person displays the vulva or the anus or the genitals; or

(D) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.

(e) Each county, city, or metropolitan government is empowered upon approval by a two-thirds (⅔) vote of its legislative body to authorize its law enforcement officers to conduct investigations into alleged violations of subsections (a)-(d), and such law enforcement officers shall report such violations to the commission for appropriate action by such commission.

(f) The commission shall be immune from liability resulting from conduct or acts of any law enforcement officers authorized to investigate violations of subsections (a)-(d) as provided in subsection (e).

History.
Acts 1980, ch. 904, §§ 1-3.

57-4-205. Alcohol vaporizing devices.

(a) As used in this section, "alcohol vaporizing device" means any device, machine or process that, by means of heat, a vibrating element or any other method, mixes spirits, liquor or other alcoholic product with pure oxygen or other gas to produce a vaporized product that is dispensed for inhalation into the lungs through the nose or mouth.

(b) No licensee shall sell, deliver, or give away, or permit to be sold, delivered, or given away, any alcoholic beverage for dispensation by means of an alcohol vaporizing device.

(c) No licensee shall bring, keep, maintain or use, or permit another to bring, keep, maintain or use, an alcohol vaporizing device on the licensed premises, or on any area related to the licensed business over which the licensee exercises control or for which the licensee is responsible.

(d)(1) A first violation of this section is a Class A misdemeanor and is grounds for suspension of the licensee's license, for a period not to exceed sixty (60) days.

(2) A second violation of this section is a Class A misdemeanor and shall result in the suspension of the licensee's license, for a period of not less than thirty (30) days nor more than ninety (90) days.

(3) A third or subsequent violation of this section is a Class E felony and shall result in suspension of the licensee's license, for a period of one (1) year.

History.
Acts 2005, ch. 402, § 1.

Cross-References.
Penalty for Class A misdemeanor, § 40-35-111.
Penalty for Class E felony, § 40-35-111.

PART 3

TAXES AND FEES

57-4-301. Privilege taxes — Tax on retail sales — Carrier license fees — Mixing bar tax.

(a) It is hereby declared the legislative intent that every person is exercising a taxable privilege who engages in the business of selling at retail in this state alcoholic beverages for consumption on the premises.

(b)(1) Each applicant for an on-premises consumption license shall pay to the commission a one-time, nonrefundable fee in the amount of three hundred dollars ($300) when the application is submitted for review. Further, once a license is approved, for the exercise of such privilege, the following taxes are levied to be earmarked for and allocated to the commission for the purpose of the administration and enforcement of the duties, powers, and functions of the commission, and are to be paid annually, as follows:

		Effective July 2003	Effective July 2004
(A)	Private club	$ 300	$ 500
(B)	Convention center	$ 500	$1000
(C)	Premier type tourist resort	$1500	$2000
(D)	Historic performing arts center	$ 300	$ 150
(E)	Urban park center	$ 500	$ 150
(F)	Commercial passenger boat company	$ 750	$1250
(G)	Historic mansion house site/Historic inn	$ 300	$ 150

(H)	Historic interpretive center	$ 300	$ 150
(I)	Community theater	$ 300	$ 150
(J)	Zoological institution	$ 300	$ 150
(K)	Museum	$ 300	$ 150
(L)	Establishment in a terminal building of a commercial air carrier airport	$1000	$1500
(M)	Commercial airline travel club	$ 500	$1000
(N)	Public aquarium	$ 300	$ 150
(O)	Motor speedway	$1000	$2000
(P)	Sports facility	$1000	$2000
(Q)	Theater	$ 300	$ 150

Further, for the exercise of such privilege, the following taxes are hereby levied to be earmarked for and allocated to the commission for the purpose of administration and enforcement of the duties, powers, and functions of the commission, and are to be paid in accordance with the following schedule:

(R) Restaurant, according to seating capacity, on licensed premises:

(i) 40 — 74 seats	$ 650
(ii) 75 — 125 seats	$ 750
(iii) 126 — 175 seats	$ 925
(iv) 176 — 225 seats	$ 975
(v) 226 — 275 seats	$1100
(vi) 276 seats and more	$1200

Wine-only restaurant, according to seating capacity on licensed premises:

	July 2003	July 2004	July 2005	July 2006
(vii) 40 — 125 seats	$ 120	$ 170	$ 220	$ 270
(viii) 126 — 175 seats	$ 150	$ 200	$ 250	$ 300
(ix) 176 — 225 seats	$ 160	$ 210	$ 260	$ 310
(x) 226 — 275 seats	$ 180	$ 230	$ 280	$ 330
(xi) 276 seats and more	$ 200	$ 250	$ 300	$ 350

(S) Caterers:

July 2003	July 2004	July 2005	July 2006
$ 500	$ 550	$ 575	$ 625

(T) Hotels, according to room capacity, on licensed premises:

	July 2003	July 2004	July 2005	July 2006
(i) 0 — 99 rooms	$1000	$1000	$1000	$1000
(ii) 100 — 399 rooms	$1000	$1000	$1200	$1250
(iii) 400 rooms and over	$1000	$1200	$1400	$1500

(U) Retirement center $150

(V) Civic arts center $150

(W) Limited service restaurant, based on the gross sales of prepared food:

(i) At least 30% of gross sales	$2,000
(ii) At least 20% but not more than 30% of gross sales	$3,000
(iii) At least 15% but not more than 20% of gross sales	$4,000
(iv) 0% but not more than 15% of gross sales	$5,000

(2) Each county or municipality within which such privilege is exercised is authorized to levy and collect the privilege tax separately. However, such privilege tax collected by the county or municipality will remain at the 2003 level and any monetary increase of the privilege tax in fiscal years beginning

July 1, 2004, and thereafter, as provided in this subsection (b) will be solely used for the purpose of the administration and enforcement of the duties, powers, and functions of the Tennessee alcoholic beverage commission; provided, however, that in any county where metropolitan government prevails, the urban service district shall constitute the municipality and the general service district shall constitute the county insofar as this chapter is concerned.

(3) Notwithstanding subdivision (b)(1)(E) to the contrary, "urban park centers" under § 57-4-102(39)(G)-(K) shall pay an annual privilege tax of four thousand dollars ($4,000) to be earmarked for and allocated to the commission for the purpose of administration and enforcement of the duties, powers, and functions of the commission.

(c)(1) In addition to the privilege taxes levied in subdivision (b)(1), there is further levied a tax equal to the rate of fifteen percent (15%) of the sales price of all alcoholic beverages sold for consumption on the premises, the tax to be computed on the gross sales of alcoholic beverages for consumption on the premises for the purpose of remitting the tax due the state, and to include each and every retail thereof.

(2) A person required by subdivision (c)(1) to collect and pay the tax on the sale of alcoholic beverages on the premises may include the tax in the menu price of the alcoholic beverage or may include the tax on the final bill to the customer. A person that does not include the tax in the menu price of the alcoholic beverage product must advise customers on its menu that a fifteen percent (15%) tax on the sale of alcoholic beverages will be added to the final bill.

(d) Commercial airlines, paddlewheel steamboat companies and passenger trains shall, in lieu of taxes levied under subsections (b) and (c), pay annually to the state, for state purposes, a license fee of twelve hundred fifty dollars ($1250). Commercial airlines, paddlewheel steamboat companies and passenger trains which have paid the annual license fee under this section may bring into and store in this state alcoholic beverages on which the Tennessee alcoholic beverage taxes levied under § 57-3-302, have not been paid, but must comply with subdivisions (d)(1) and (2):

(1) Commercial airlines, paddlewheel steamboat companies and passenger trains that bring into, or possess in this state alcoholic beverages on which taxes levied by this state have not been paid are liable for such taxes on the alcoholic beverages;

(2) The liability of commercial airlines, paddlewheel steamboat companies and passenger trains for taxes levied under § 57-3-302, is determined by multiplying the:

(A) Quantity of each type of alcoholic beverage purchased within the operating system of each commercial airline, paddlewheel steamboat company or passenger train by the ratio of its revenue passenger miles in Tennessee to the total revenue passenger miles within its system; and

(B) Respective results obtained under subdivision (d)(2)(A), by the applicable tax rate for each type under § 57-3-302, and the rules and regulations promulgated pursuant thereto;

(3) Monthly reports of the liability, determined under subdivision (d)(2), shall be submitted to the department of revenue on forms designated by the

commissioner, on or before the last day of each month following the month during which any tax liability arises under this subsection (d). A commercial airline, paddlewheel steamboat company or passenger train that fails to file the report required, or to pay the tax payable under this section in a timely manner as defined by rules and regulations promulgated by the department, is liable for interest and penalties as provided by law; and

(4) This subsection (d) does not apply to commercial airline travel clubs.

(e) No tax authorized or imposed by this section shall be levied or assessed from any charitable, nonprofit, or political organization selling alcoholic beverages at retail pursuant to a special occasion license.

(f) A restaurant, hotel, or caterer licensed under this chapter may obtain a catering license upon the payment of an additional privilege tax in accordance with subdivision (b)(1)(S), for state purposes, to be paid annually.

(g) A special historic district authorized to serve wine under § 57-4-101 shall pay an annual privilege tax of one hundred dollars ($100) for the privilege of serving wine within such district.

History.

Acts 1967, ch. 211, § 3; 1972, ch. 682, § 5; 1972, ch. 756, § 6; 1979, ch. 284, § 1; 1979, ch. 401, § 5; T.C.A., § 57-157; Acts 1980, ch. 898, § 3; 1981, ch. 404, § 5; 1981, ch. 475, § 5; 1983, ch. 52, § 6; 1983, ch. 300, § 5; 1983, ch. 469, § 8; 1984, ch. 975, § 8; 1986, ch. 899, § 9; 1987, ch. 444, §§ 10, 11; 1991, ch. 219, § 2; 1992, ch. 674, § 8; 1998, ch. 795, § 4; 2001, ch. 64, § 3; 2001, ch. 74, § 5; 2001, ch. 84, § 3; 2004, ch. 544, § 3; 2004, ch. 876, §§ 7-10; 2005, ch. 253, § 3; 2009, ch. 168, § 1; 2010, ch. 647, § 3; 2010, ch. 1133, § 4; 2012, ch. 790, §§ 3, 4; 2013, ch. 371, § 2; 2014, ch. 915, § 1; 2017, ch. 338, § 4.

Compiler's Notes.

Acts 1983, ch. 300, § 6 provided that the addition by that act of subdivision (b)(1)(I) shall apply only to counties having a population of 450,000 or greater according to the 1980 federal census or any subsequent census.

Acts 2009, ch. 168, § 2 provided that for purposes of § 57-4-301, the annual taxes imposed for an historic inn shall be equal to the tax assessed for an historic mansion house site.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Cross-References.

Certain 1987 amendments to section inapplicable to certain counties, § 57-4-104.

Tennessee wine products exempt, § 57-3-207.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 8, 10; 23 Tenn. Juris., Taxation, § 9.

Attorney General Opinions.

Distribution of tax proceeds in City of Columbia, OAG 94-72 (6/2/94).

Distribution of tax proceeds in Bedford County, OAG 97-143 (10/23/97).

Licensing and taxation of hotels selling alcohol for consumption on the premises. OAG 16-05, 2016 Tenn. AG LEXIS 3 (2/9/2016).

NOTES TO DECISIONS

Analysis

1. In General.
2. Only One Taxing Authority.
3. Effect of General Sales Taxes.
4. Burden of Proof.
5. Beverages Used in Cooking.

1. In General.

The liquor by the drink tax is a tax imposed expressly upon persons engaged in the business of selling alcoholic beverages for consumption on the premises. Oliver v. King, 612 S.W.2d 152, 1981 Tenn. LEXIS 413 (Tenn. 1981).

2. Only One Taxing Authority.

The use of the word "separately" in this statute does not mean that the privilege tax may be collected twice, once for the county and once for the municipality. Metropolitan Government of Nashville & Davidson County v. Motel Systems, Inc., 525 S.W.2d 840, 1975 Tenn. LEXIS 661 (Tenn. 1975).

3. Effect of General Sales Taxes.

The legislative expressions in the liquor regulatory acts caption and taxing statutes, simply do not, either expressly or by implication negate the express intent of the Legisla-

ture in the 1947 Sales Tax Act that it be in addition to all taxes, whether levied as excise, license, or privilege taxes, a clear authorization of the sales tax as a double tax. Oliver v. King, 612 S.W.2d 152, 1981 Tenn. LEXIS 413 (Tenn. 1981).

If the Legislature had intended that liquor consumed on the premises should be exempt from the general sales tax it would have expressly stated so. Oliver v. King, 612 S.W.2d 152, 1981 Tenn. LEXIS 413 (Tenn. 1981).

4. Burden of Proof.

The burden of proof is upon the taxpayer to prove that an assessment made is incorrect, and vague allegations by the taxpayer to the effect that the department's method of ascertaining the taxes due are incorrect were not sufficient to carry such burden. The taxpayer must show by a preponderance of evidence that he not only overpaid his taxes, but also the amount of such overpayment. Edmondson Management Service, Inc. v. Woods, 603 S.W.2d 716, 1980 Tenn. LEXIS 482 (Tenn. 1980); Benevolent Protective Order of Elks, Lodge No. 1279 v. Olsen, 669 S.W.2d 654, 1984 Tenn. LEXIS 785 (Tenn. 1984); Ace of Clubs v. Huddleston, 872 S.W.2d 679, 1993 Tenn. App. LEXIS 516 (Tenn. Ct. App. 1993).

5. Beverages Used in Cooking.

Restaurant's use of wines in cooking preparations was not subject to the privilege tax for retail sales of alcoholic beverages for consumption on the premises. Copper Cellar Corp. v. Jackson, 762 S.W.2d 560, 1988 Tenn. LEXIS 249 (Tenn. 1988).

57-4-302. Collection of taxes.

The commissioner of revenue is charged with the responsibility of collecting all taxes set out herein due to the state, and in addition to the requirements set out herein, is authorized to promulgate such rules and regulations as will further implement the full collection of all taxes herein imposed:

(1) **Tax Collected from Consumers.** The tax hereby imposed shall be collected by the retailer from the consumer insofar as it can be done;

(2) **Tax to Be Separately Displayed from List Price.** The commissioner may by regulation provide that the amount collected by the retailer from the consumer in reimbursement of the tax be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sale check, or other proof of sale;

(3)(A) **Bond of Licensee.** Every licensee permitted to do business in this state shall, as a condition precedent to the granting of a license, in addition to all other requirements set out herein, post with the commissioner an indemnity bond with good and solvent corporate surety, approved by the commissioner, in an amount equal to four (4) times the average monthly tax liability as determined by the commissioner or in the amount of one thousand dollars ($1,000), whichever is greater, conditioned upon the proper payment of all taxes for which the sale licensee may become liable. If a restaurant is licensed by the commission under § 57-4-101(i), the bond amount imposed shall be one fifth (⅕) the amount specified in this subdivision (3)(A). The forfeiture or cancellation of the bond, for any reason whatsoever, shall automatically revoke the license granted herein. The bond provided for herein shall run for such time as may be determined by the commissioner.

(B) **Certificate of Deposit.** In lieu of a corporate surety on the bond required by subdivision (3)(A), the commissioner may allow the licensee to secure such bond by depositing collateral in the form of a certificate of deposit, as accepted and authorized by the banking laws of this state, which has a face value equal to the amount of the bond. Such collateral may be deposited with any authorized state depository designated by the

commissioner. Interest on any deposited certificate of deposit shall be payable to the licensee who has deposited it as collateral, or to such person as the licensee or the certificate may direct.

(4) **Time of Payment.** The tax levied hereunder in § 57-4-301(c) shall be due and payable monthly, on the first day of each month, and for the purpose of ascertaining the amount of tax payable under this chapter, it is the duty of all licensees on or before the fifteenth day of each month to transmit to the commissioner, upon forms prescribed, prepared and furnished by the commissioner, returns showing the gross sales, as the case may be, arising from all sales taxable under this chapter during the preceding calendar month;

(5) **Tax Transmitted with Return.** At the time of transmitting the return required hereunder to the commissioner, the licensee shall remit to the commissioner therewith the amount of tax due under the applicable provisions of this chapter, and failure to so remit such tax shall cause the tax to become delinquent; and

(6) **Form of Payment.** All taxes, interest and penalties imposed under § 57-4-301(c) shall be paid to the commissioner at Nashville in the form of remittance required by the commissioner.

History.

Acts 1967, ch. 211, § 3; 1973, ch. 68, § 1; 1976, ch. 441, § 1; T.C.A., § 57-158; Acts 1989, ch. 558, § 1; 1992, ch. 982, § 2.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 8, 10; 23 Tenn. Juris., Sretyship, § 5.

Attorney General Opinions.

Licensing and taxation of hotels selling alcohol for consumption on the premises. OAG 16-05, 2016 Tenn. AG LEXIS 3 (2/9/2016).

NOTES TO DECISIONS

Analysis

1. Extent of Bond.
2. Surplusage.
3. Ambiguity.

1. Extent of Bond.

When T.C.A. § 57-4-302(3) of this section is construed as an integral part of the liquor sales law the conclusion is inescapable that the legislature intended to require a bond whose obligation would be limited to the payment of all state taxes incurred by the licensee by reason of his sale of alcoholic beverages by the drink and would not cover taxes incurred by reason of other activities. Aetna Casualty & Surety Co. v. Woods, 565 S.W.2d 861, 1978 Tenn. LEXIS 550 (Tenn. 1978).

A surety bond executed pursuant to T.C.A. § 57-4-302(3) indemnifies the principal against all taxes for which the sales licensee may become liable, including general sales taxes. Exchange Mut. Ins. Co. v. Olsen, 655 S.W.2d 938, 1983 Tenn. LEXIS 710 (Tenn. 1983).

A privilege tax to the principal is also a privilege tax to the surety. Exchange Mut. Ins. Co. v. Olsen, 667 S.W.2d 62, 1984 Tenn. LEXIS 775 (Tenn. 1984).

2. Surplusage.

In construing a liquor license bond the court will assume that the parties executing the bond intended compliance with the requirements of the statute, nothing more and nothing less, and if the bond contains conditions not prescribed by the statute they may be eliminated as surplusage. Aetna Casualty & Surety Co. v. Woods, 565 S.W.2d 861, 1978 Tenn. LEXIS 550 (Tenn. 1978).

Any provisions of bond which purport to diminish surety's statutory liability are mere surplusage. Exchange Mut. Ins. Co. v. Olsen, 655 S.W.2d 938, 1983 Tenn. LEXIS 710 (Tenn. 1983).

3. Ambiguity.

Where the amount of a bond revised through riders and other documents created two plausible interpretations of the agreement, the ambiguity was resolved against the draftsmen and in favor of the other contracting party. Reliance Ins. Co. v. Olsen, 678 S.W.2d 59, 1984 Tenn. LEXIS 859 (Tenn. 1984).

57-4-303. Settlement of tax on quitting business.

If any licensee liable for any tax, interest or penalty levied hereunder shall sell the business or stock of goods, or shall quit the business, the licensee shall make a final return and payment within fifteen (15) days after the date of selling or quitting the business. The successor, successors or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of such taxes, interest and penalties due and unpaid until such former owner shall produce a receipt from the commissioner showing that they have been paid, or a certificate stating that no taxes, interest or penalties are due. If the purchaser of a business or stock of goods shall fail to withhold the purchase money, the purchaser shall be personally liable for the payment of the taxes, interest, and penalties accruing and unpaid on account of the operation of the business by any former owner, owners, or assigns.

History.
Acts 1967, ch. 211, § 3; T.C.A., § 57-159.

Attorney General Opinions.
Licensing and taxation of hotels selling alcohol for consumption on the premises. OAG 16-05, 2016 Tenn. AG LEXIS 3 (2/9/2016).

57-4-304. Grace period — Delinquencies and other violations — Penalties.

(a) The commissioner for good cause may extend for not to exceed thirty (30) days the time for making any returns required under this chapter.

(b)(1) When any licensee shall fail to make any return and pay the full amount of the tax as required by this chapter for as many as three (3) times during any one (1) year licensing period, the commission, upon recommendation of the commissioner, may revoke or suspend the license held by such licensee in the same manner and under the same conditions as provided by § 57-4-202.

(2)(A) It is a Class B misdemeanor and punishable as such for any person to engage or continue to engage in business after revocation of the person's license or during any period of suspension of the license as provided hereinabove; and each day business is done in violation hereof shall constitute a separate offense.

(B) In addition, the commissioner or the commissioner's delegate or the commission may file and maintain injunctive proceedings, acting either through the attorney general or the attorney general's delegate or through the legal assistant to the commissioner or the legal assistant to the commissioner's delegate, against any person for the purpose of enjoining the person from doing business as such a licensee during any period of suspension or after revocation of the license. Upon a finding that such person is doing business in violation of the order of revocation or suspension, an injunction shall be issued thereupon. If any person shall refuse to obey or otherwise violate any injunction so issued, or shall break into or enter, or occupy or use, any building or place of business while closed under any injunction so issued, whether preliminary or final, the person is guilty of contempt of court and shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars

($1,000) or by imprisonment of not less than thirty (30) days nor more than one (1) year, or by both fine and imprisonment in the discretion of the court.

History.
Acts 1967, ch. 211, § 3; 1970, ch. 398, § 5; 1973, ch. 68, § 2; T.C.A., § 57-160; Acts 1980, ch. 885, § 5; 1985, ch. 76, § 1; 1985, ch. 396, § 6; 1988, ch. 526, § 14; 1989, ch. 591, § 112.

Cross-References.
Penalty for Class B misdemeanor, § 40-35-111.

Compiler's Notes.
Acts 1988, ch. 526, § 45 provided that the amendment by that act shall apply to all assessments of penalty made on or after January 1, 1989.

57-4-305. Notice of licensee's tax delinquency — Response.

(a) In the event any licensee is delinquent in the payment of the tax herein provided for, the commissioner may give notice of the amount of such delinquency by registered mail to all persons, including the commission, having in their possession or under their control any credits or other personal property belonging to such dealer, or owing any debts to such dealer at the time of receipt by them of such notice, and thereafter any person so notified shall neither transfer nor make any other disposition of such credits, other personal property, or debts, until the commissioner shall have consented to a transfer or disposition, or until thirty (30) days shall have elapsed from and after the receipt of such notice. Any notice given to the commission pursuant to this section shall be on paper measuring eight and one-half inches by eleven inches (8½″ x 11″) and shall contain information on not more than one (1) licensed dealer who is delinquent in the payment or remittance of any tax owing to this state.

(b) All persons so notified must, within five (5) days after receipt of such notice, advise the commission of any and all such credits, other personal property, or debts, in their possession, under their control or owing by them, as the case may be.

History.
Acts 1967, ch. 211, § 3; T.C.A., § 57-161; 1999, ch. 403, § 5.

Cross-References.
Certified mail in lieu of registered mail, § 1-3-111.

57-4-306. Distribution of collections.

(a) All gross receipt taxes collected under § 57-4-301(c) shall be distributed by the commissioner of revenue as follows:

(1) Fifty percent (50%) to the general fund to be earmarked for education purposes; and

(2) The other fifty percent (50%) to be distributed to local political subdivisions as follows:

(A) Collections for privileges exercised in an incorporated municipality shall be distributed by the commissioner to the city recorder; and

(B) Collections for privileges exercised in an unincorporated area of the county shall be distributed by the commissioner to the county trustee.

(b)(1) From July 1, 2017, until June 30, 2018, the proceeds received by a local political subdivision pursuant to subdivision (a)(2) shall be distributed

by the local political subdivision in the following manner:

(A) One-half (½) of the proceeds shall be distributed as follows:

(i) If the county school system is the only LEA in the county, then to the county trustee for the county school system from the collection of taxes in the county or any city exercising the privilege authorized under § 57-4-301(c);

(ii) If a city exercises the privilege authorized under § 57-4-301(c) and operates a kindergarten through grade twelve (K-12) school system, then the city recorder shall retain the collections for the city school system;

(iii) If a city exercises the privilege authorized under § 57-4-301(c) and operates a city school system that is not a kindergarten through grade twelve (K-12) school system, then to the city recorder:

(a) In the amount the percentage that the 2016-2017 average daily attendance (ADA) of the students in the city school system is to the 2016-2017 ADA of public school students residing in the city who attend either the city school system or the county school system with the remaining amount distributed to the county trustee for the county school system, if the city lies entirely in a single county; or

(b) In the amount the percentage that the 2016-2017 ADA of the students in the city school system is to the 2016-2017 ADA of public school students residing in the city who attend either the city school system or a county school system with the remaining amount divided between the counties based on where the tax was collected and distributed to the county trustees for the county school systems, if the city lies within two (2) or more counties;

(iv) Notwithstanding § 49-3-315, if a city exercises the privilege authorized under § 57-4-301(c), but does not operate a city school system, then to the county trustee for the county school system;

(v) If a special school district lies, in whole or in part, within a city that exercises the privilege authorized under § 57-4-301(c), then to the appropriate official acting for the special school district in the amount the percentage the ADA of public school students residing in the city and attending the special school district is to the total ADA of city public school students who attend either the special school district or the county school system with any remaining amount distributed to the county trustee for the county school system;

(vi) Notwithstanding § 49-3-315, if a county exercises the privilege authorized under § 57-4-301(c) and one (1) or more city school systems operate within the county, then to the county trustee for the county school system any tax revenues collected outside the boundaries of cities exercising the privilege authorized under § 57-4-301(c) that have city school systems; or

(vii) If a city that lies in two (2) or more counties exercises the privilege authorized under § 57-4-301(c) but does not operate a city school system, then tax revenues collected in the city shall be divided between the counties based on where the tax was collected and distributed to the county trustees for the county school systems; and

(B) The other one-half (½) of the proceeds shall be distributed as follows:

(i) Collections of gross receipts collected in unincorporated areas, to the county general fund; and

(ii) Collections of gross receipts in incorporated cities and towns, to the city or town wherein such tax is collected.

(2) From July 1, 2018, until June 30, 2019, the proceeds received by a local political subdivision pursuant to subdivision (a)(2) shall be distributed by the local political subdivision in the following manner:

(A) One-half (½) of the proceeds shall be distributed as follows:

(i) If the county school system is the only LEA in the county, then to the county trustee for the county school system from the collection of taxes in the county or any city exercising the privilege authorized under § 57-4-301(c);

(ii) If a city exercises the privilege authorized under § 57-4-301(c) and operates a kindergarten through grade twelve (K-12) school system, then the city recorder shall retain the collections for the city school system;

(iii) If a city exercises the privilege authorized under § 57-4-301(c) and operates a city school system that is not a kindergarten through grade twelve (K-12) school system, then to the city recorder:

(a) In the amount the percentage that the 2017-2018 average daily attendance (ADA) of the students in the city school system is to the 2017-2018 ADA of public school students residing in the city who attend either the city school system or the county school system with the remaining amount distributed to the county trustee for the county school system, if the city lies entirely in a single county; or

(b) In the amount the percentage that the 2017-2018 ADA of the students in the city school system is to the 2017-2018 ADA of public school students residing in the city who attend either the city school system or a county school system with the remaining amount divided between the counties based on where the tax was collected and distributed to the county trustees for the county school systems, if the city lies within two (2) or more counties;

(iv) Notwithstanding § 49-3-315, if a city exercises the privilege authorized under § 57-4-301(c), but does not operate a city school system, then to the county trustee for the county school system;

(v) If a special school district lies, in whole or in part, within a city that exercises the privilege authorized under § 57-4-301(c), then to the appropriate official acting for the special school district in the amount the percentage the ADA of public school students residing in the city and attending the special school district is to the total ADA of city public school students who attend either the special school district or the county school system with any remaining amount distributed to the county trustee for the county school system;

(vi) Notwithstanding § 49-3-315, if a county exercises the privilege authorized under § 57-4-301(c) and one (1) or more city school systems operate within the county, then to the county trustee for the county

school system any tax revenues collected outside the boundaries of cities exercising the privilege authorized under § 57-4-301(c) that have city school systems; or

(vii) If a city that lies in two (2) or more counties exercises the privilege authorized under § 57-4-301(c) but does not operate a city school system, then tax revenues collected in the city shall be divided between the counties based on where the tax was collected and distributed to the county trustees for the county school systems; and

(B) The other one-half (½) of the proceeds shall be distributed as follows:

(i) Collections of gross receipts collected in unincorporated areas, to the county general fund; and

(ii) Collections of gross receipts in incorporated cities and towns, to the city or town wherein such tax is collected.

(3)(A) As used in subdivision (b)(1), "average daily attendance" or "ADA" means:

(i) If the school system was in operation during the 2016-2017 school year, the aggregate days' attendance of the school system during the 2016-2017 school year divided by the number of days school was in session during the 2016-2017 school year; or

(ii) If the school system was not in operation during the 2016-2017 school year, then the estimated expected attendance of the school system for the 2017-2018 school year as reported to the department of education.

(B) As used in subdivision (b)(2), "average daily attendance" or "ADA" means:

(i) If the school system was in operation during the 2017-2018 school year, the aggregate days' attendance of the school system during the 2017-2018 school year divided by the number of days school was in session during the 2017-2018 school year; or

(ii) If the school system was not in operation during the 2017-2018 school year, then the estimated expected attendance of the school system for the 2018-2019 school year as reported to the department of education.

(c) After July 1, 2019, the proceeds received in each local political subdivision pursuant to subdivision (a)(2) shall be distributed by the local political subdivision in the following manner:

(1) One-half (½) of the proceeds shall be expended and distributed in the same manner as the county property tax for schools is expended and distributed; any proceeds expended and distributed to municipalities which do not operate their own school systems separate from the county are required to remit one-half (½) of their proceeds of the gross receipts liquor-by-the-drink tax to the county school fund; and

(2) The other one-half (½) of the proceeds shall be distributed as follows:

(A) Collections of gross receipts collected in unincorporated areas, to the county general fund; and

(B) Collections of gross receipts in incorporated cities and towns, to the city or town wherein such tax is collected.

(d) Notwithstanding subdivision (a)(2), the fifty percent (50%) of the gross receipt taxes allocated to local political subdivisions by subdivision (a)(2) and collected in a municipality which is a premier tourist resort shall be distributed to and expended by such municipality for schools in such municipality.

(e) By August 1, 2014, every city or county that exercises the privilege authorized under § 57-4-301(c) shall provide written notice to each school system operating within its jurisdiction. This notice shall contain a statement that the local political subdivision exercises the privilege authorized under § 57-4-301(c), a statement that students within the jurisdiction attend a school or schools operated by the school system, a statement that the school system is authorized to receive a portion of the revenues collected, and a reference to this part. A city or county that, subsequent to July 1, 2014, elects to exercise the privilege authorized under § 57-4-301(c), shall comply with the notice provisions of this subsection (e) within thirty (30) days of the effective date of the referendum.

(f) If the local political subdivision fails to remit the proceeds to the appropriate school fund, system, or systems as required under subsections (b) or (c) as applicable within sixty (60) days of receipt from the commissioner, then the aggrieved local school board shall notify the comptroller of the treasury who shall deliver by certified mail a written notice of such failure to the local political subdivision within five (5) business days of notice of the failure.

(g) In the event the local political subdivision fails to remit the proceeds within thirty (30) days of the receipt of such notice, the comptroller of the treasury shall direct the commissioner to withhold future distributions of proceeds to the local political subdivision authorized under subsections (b) or (c) as applicable until a final determination is made pursuant to subsection (h).

(h) Upon the commissioner withholding distributions of proceeds as authorized under subsection (g), an aggrieved local school board shall have the authority to pursue equitable relief against the local political subdivision in the chancery court; provided, however, that in the event that the state is a party or becomes a party to the suit, then such suit shall be filed or transferred to the chancery court of Davidson County. Upon receipt of a copy of the final judgment of the court, the commissioner shall distribute all withheld proceeds to the local political subdivision, which shall remit such proceeds to the aggrieved party pursuant to the judgment. If the amount of the judgment is not satisfied by the withheld proceeds, then the local political subdivision shall be solely responsible for remitting future proceeds to the aggrieved party pursuant to the judgment.

(i)(1) Subsections (a)-(h) shall not apply in counties having a population, according to the 2010 federal census or any subsequent federal census of:

not less than	nor more than
336,400	336,500
98,900	99,000

In such counties, all gross receipt taxes collected under § 57-4-301(c) shall be distributed by the commissioner of revenue as follows:

(A) Fifty percent (50%) to the general fund to be earmarked for education purposes; and

(B) The other fifty percent (50%) to be distributed to local political subdivisions as follows:

(i) Collections for privileges exercised in an incorporated municipality shall be distributed by the commissioner to the city recorder; and

(ii) Collections for privileges exercised in an unincorporated area of the county shall be distributed by the commissioner to the county trustee.

(2) The proceeds received in each local political subdivision pursuant to subdivision (i)(1)(B) shall be distributed by the local political subdivision in the following manner:

(A) One-half (½) of the proceeds shall be expended and distributed in the same manner as the county property tax for schools is expended and distributed; any proceeds expended and distributed to municipalities which do not operate their own school systems separate from the county are required to remit one-half (½) of their proceeds of the gross receipts liquor-by-the-drink tax to the county school fund; and

(B) The other one-half (½) of the proceeds shall be distributed as follows:

(i) Collections of gross receipts collected in unincorporated areas, to the county general fund; and

(ii) Collections of gross receipts in incorporated cities and towns, to the city or town wherein such tax is collected.

(j) **[Effective on January 1, 2019 and effective until July 1, 2023.]**

(1) Notwithstanding this section to the contrary, fifty percent (50%) of the event revenue from gross receipt taxes collected under § 57-4-301(c) for privileges exercised in an event venue during an event period that would not otherwise be earmarked for educational purposes shall be deposited in the event tourism fund.

(2) One and one hundred twenty-five thousandths percent (1.125%) of funds deposited in the event tourism fund shall be retained by the department of finance and administration to be used for costs associated with administering the fund and this section. The department of finance and administration shall cause to be paid to the department of revenue an amount to offset the department's costs in administering this section.

(3) As used in this subsection (j):

(A) "Event period" has the same meaning as defined in § 67-6-105;

(B) "Event revenue" has the same meaning as defined in § 67-6-105; and

(C) "Event venue" has the same meaning as defined in § 67-6-105.

History.

Acts 1967, ch. 211, § 3; T.C.A., § 57-162; Acts 1982, ch. 942, §§ 1, 2; 1983, ch. 356, § 1; 2003, ch. 355, § 19; 2005, ch. 500, § 2; 2006, ch. 989, § 7; 2014, ch. 901, § 1; 2015, ch. 220, §§ 1, 2; 2016, ch. 885, §§ 1, 2; 2017, ch. 346, §§ 1, 2; 2018, ch. 687, §§ 1, 2; 2018, ch. 959, § 2.

Compiler's Notes.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2003, ch. 355, § 66 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of

Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

Acts 2006, ch. 989, § 17 provided that the act, which deleted former subdivisions (4) and (5), shall apply to funds remitted to the department of revenue on or after August 1, 2006.

For the Preamble to the act concerning a mechanism by which a sponsoring county or municipality and event venue may receive reimbursement for certain event-related expenses out of the sales tax revenues generated in connection with a qualified event, please refer to Acts 2018, ch. 959.

Acts 2018, ch. 959, § 4 provided that the provisions contained in the act, which added subsection (j), shall terminate on July 1, 2023.

Amendments.

The 2018 amendment by ch. 687 in (b), substituted "2016-2017" for "2015-2016" throughout (b)(1), substituted "From July 1, 2017, until June 30, 2018," for "From July 1, 2016, until June 30, 2017," at the beginning of (b)(1), substituted "2017-2018" for "2016-2017 throughout (b)(2), substituted "From July 1, 2018, until June 30, 2019," for "From July 1, 2017, until June 30, 2018," at the beginning of (b)(2); and substituted "After July 1, 2019" for "After July 1, 2018" at the beginning of the introductory language of (c).

The 2018 amendment by ch. 959, effective on January 1, 2019 and effective until July 1, 2023, added (j). See the Compiler's Notes.

Effective Dates.

Acts 2018, ch. 687, § 3. July 1, 2018.

Acts 2018, ch. 959, § 4. January 1, 2019.

Cross-References.

Changes in municipal boundaries, effect upon receipt and distribution of tax revenues, § 6-51-115.

Attorney General Opinions.

Distribution of tax proceeds in City of Columbia, OAG 94-72 (6/2/94).

Distribution of tax proceeds in Bedford County, OAG 97-143 (10/23/97).

The state can probably continue to distribute state-shared taxes even if the General Assembly does not enact a general appropriations act, OAG 00-083 (5/4/00).

Authority of county school board to compromise or forgive liquor-by-the-drink tax revenue. OAG 14-22, 2014 Tenn. AG LEXIS 23 (2/26/14).

NOTES TO DECISIONS

Analysis

1. Construction.
2. Allocation of Funds.

1. Construction.

Trial court did not err in finding that former T.C.A. § 57-4-306(a)(2)(A) (amended 2014) did not require the cities to share one-half of their liquor-by-the-drink tax revenue with the county's school system where the statute was ambiguous, and based on the surrounding statutory scheme, legislative history, and other authorities, the General Assembly's intent was to require solely those cities that did not operate their own school systems to share the liquor-by-the-drink proceeds with the counties in which they were located. Blount Cty. Bd. of Educ. v. City of Maryville, — S.W.3d —, 2017 Tenn. App. LEXIS 831 (Tenn. Ct. App. Dec. 27, 2017).

Trial court properly granted the cities summary judgment on the county's claim for reimbursement of the funds each city's respective school systems had received as a result of liquor-by-the-drink sales in unincorporated areas of the county given the proper interpretation of T.C.A. § 57-4-306(a)(2)(A). Blount Cty. Bd. of Educ. v. City of Maryville, — S.W.3d —, 2017 Tenn. App. LEXIS 831 (Tenn. Ct. App. Dec. 27, 2017).

Upon thorough review of the language of the statute in light of the statutory framework, legislative history, and attorney general's opinions referenced by the legislative history, the Court of Appeals of Tennessee, at Knoxville, holds that the General Assembly's intent in enacting the 1982 Amendment to T.C.A. § 57-4-306(a)(2)(A) was to require solely those municipalities that did not operate their own school systems to share liquor-by-the-drink tax proceeds with the counties in which they were located. Wash. Cty. Sch. Sys. v. City of Johnson City, — S.W.3d —, 2017 Tenn. App. LEXIS 832 (Tenn. Ct. App. Dec. 27, 2017).

Court of Appeals of Tennessee, at Knoxville, concludes that because T.C.A. § 57-4-103(a)(1) set forth the effectiveness of the entire statutory chapter in which former T.C.A. § 57-4-306(a) (amended 2014), was located, § 57-4-103(a)(1) operated to classify a local political subdivision receiving liquor-by-the-drink taxes from the Commissioner of Revenue as one that had passed a liquor-by-the-drink referendum. The Court of Appeals further concludes, however, that this did not necessarily exempt a city from the general requirement of § 57-4-306(a)(2)(A) of distributing one-half of its liquor-by-the-drink revenue in the manner of county property tax distribution. Wash. Cty. Sch. Sys. v. City of Johnson City, — S.W.3d —, 2017 Tenn. App. LEXIS 832 (Tenn. Ct. App. Dec. 27, 2017).

Under the plain language of former T.C.A. § 57-4-306(a)(2)(A) (amended 2014), a city was excluded from the proviso of remitting one-half of its proceeds into the county's school fund

when the city operated its own school system. Wash. Cty. Sch. Sys. v. City of Johnson City, — S.W.3d —, 2017 Tenn. App. LEXIS 832 (Tenn. Ct. App. Dec. 27, 2017).

Under former T.C.A. § 57-4-306(a)(2)(A) (amended 2014), one-half of the proceeds were to be expended and distributed in the same manner as the county property tax for schools on the condition or understanding that any proceeds expended and distributed to municipalities which did not operate their own school systems separate from the county were required to remit one half of their proceeds of the gross receipts liquor-by-the-drink tax to the county school fund. The clause "which did not operate their own school systems separate from the county" functioned as a restrictive relative clause, restricting the municipalities to which that proviso applied to those that did not operate their own school systems. Wash. Cty. Sch. Sys. v. City of Johnson City, — S.W.3d —, 2017 Tenn. App. LEXIS 832 (Tenn. Ct. App. Dec. 27, 2017).

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Court of Appeals of Tennessee, at Knoxville, concludes that because T.C.A. § 57-4-103(a)(1) set forth the effectiveness of the entire statutory chapter in which former T.C.A. § 57-4-306(a) (amended 2014) was located, § 57-4-103(a)(1) operated to classify a local political subdivision receiving liquor-by-the-drink taxes from the Commissioner of Revenue as one that had passed a liquor-by-the-drink referendum. The Court of Appeals further concludes, however, that this did not necessarily exempt a city from the general requirement of § 57-4-306(a)(2)(A) of distributing one-half of its liquor-by-the-drink revenue in the manner of county property tax distribution. Bradley Cty. Sch. Sys. v. City of Cleveland, — S.W.3d —, 2017 Tenn. App. LEXIS 833 (Tenn. Ct. App. Dec. 27, 2017).

Court of Appeals of Tennessee, at Knoxville, determines that as presented to and adopted in the Senate, the legislative intent of the 1982 Amendment to T.C.A. § 57-4306(a)(2)(A) was to correct a situation in which some municipalities that did not operate their own school systems were failing to distribute the statutorily required portion of liquor-by-the-drink gross receipt taxes to the counties whose school systems they utilized. As explained by the Senate sponsor, the intent was not to require municipalities that operated their own school systems to distribute liquor-by-the-drink revenue to the corresponding counties. Bradley Cty. Sch. Sys. v. City of Cleveland, — S.W.3d —, 2017 Tenn. App. LEXIS 833 (Tenn. Ct. App. Dec. 27, 2017).

Upon thorough review of the language of the statute in light of the statutory framework, legislative history, and attorney general's opinions referenced by the legislative history, the Court of Appeals of Tennessee, at Knoxville, holds that the General Assembly's intent in enacting the 1982 Amendment to T.C.A. § 57-4-306(a)(2)(A) was to require solely those municipalities that did not operate their own school systems to share liquor-by-the-drink tax proceeds with the counties in which they were located. Bradley Cty. Sch. Sys. v. City of Cleveland, — S.W.3d —, 2017 Tenn. App. LEXIS 833 (Tenn. Ct. App. Dec. 27, 2017).

Court of Appeals of Tennessee, at Knoxville, agrees that under the plain language of former T.C.A. § 57-4-306(a)(2)(A) (amended 2014), a city was excluded from the proviso of remitting one-half of its proceeds into a county's school fund when the city operated its own school system. Bradley Cty. Sch. Sys. v. City of Cleveland, — S.W.3d —, 2017 Tenn. App. LEXIS 833 (Tenn. Ct. App. Dec. 27, 2017).

Under former T.C.A. § 57-4-306(a)(2)(A) (amended 2014), one-half of the proceeds were to be expended and distributed in the same manner as the county property tax for schools on the condition or understanding that any proceeds expended and distributed to municipalities which did not operate their own school systems separate from the county were required to remit one half of their proceeds of the gross receipts liquor-by-the-drink tax to the county school fund. The clause "which did not operate their own school systems separate from the county" functioned as a restrictive relative clause, restricting the municipalities to which this proviso applied to those that did not operate their own school systems. Sullivan Cty. v. City of Bristol, — S.W.3d —, 2017 Tenn. App. LEXIS 834 (Tenn. Ct. App. Dec. 27, 2017).

Court of Appeals of Tennessee, at Knoxville, agrees that under the plain language of former T.C.A. § 57-4-306(a)(2)(A) (amended 2014), cities a excluded from the proviso of remitting one-half of their proceeds into a county's school fund when the cities operated their own school systems. Sullivan Cty. v. City of Bristol, — S.W.3d —, 2017 Tenn. App. LEXIS 834 (Tenn. Ct. App. Dec. 27, 2017).

Court of Appeals of Tennessee, at Knoxville, concludes that because T.C.A. § 57-4-103(a)(1)

set forth the effectiveness of the entire statutory chapter in which former T.C.A. § 57-4-306(a) (amended 2014) was located, § 57-4-103(a)(1) operated to classify a local political subdivision receiving liquor-by-the-drink taxes from the Commissioner of Revenue as one that had passed a liquor-by-the-drink referendum. The Court of Appeals further concludes, however, that this did not necessarily exempt the cities from the general requirement of former T.C.A. § 57-4-306(a)(2)(A) (amended 2014) of distributing one-half of their respective liquor-by-the-drink revenue in the manner of county property tax distribution. Sullivan Cty. v. City of Bristol, — S.W.3d —, 2017 Tenn. App. LEXIS 834 (Tenn. Ct. App. Dec. 27, 2017).

Upon thorough review of the language of the statute in light of the statutory framework, legislative history, and attorney general's opinions referenced by the legislative history, the Court of Appeals of Tennessee, at Knoxville, holds that the General Assembly's intent in enacting the 1982 Amendment to T.C.A. § 57-4-306(a)(2)(A) was to require solely those municipalities that did not operate their own school systems to share liquor-by-the-drink tax proceeds with the counties in which they were located. Sullivan Cty. v. City of Bristol, — S.W.3d —, 2017 Tenn. App. LEXIS 834 (Tenn. Ct. App. Dec. 27, 2017).

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2. Allocation of Funds.

County board of education, which was located in a county in which the voters of the county had not authorized the sale of liquor by the drink within the county, was entitled to recover a share of liquor by the drink tax revenues from a city within the county in which the voters of the city had authorized the sale of liquor by the drink within the city. Specifically, the county was entitled to one-half of the 50 percent (25 percent) allocated by the Commissioner of Revenue for Tennessee to the city. Coffee Cty. Bd. of Educ. v. City of Tullahoma, — S.W.3d —, 2018 Tenn. App. LEXIS 29 (Tenn. Ct. App. Jan. 23, 2018).

57-4-307. Damaged or unaccepted goods — Liability for tax.

When any common carrier transporting alcoholic beverages to a point within this state, or any insurance company insuring such alcoholic beverages, comes into possession of such alcoholic beverages by virtue of the same being damaged or otherwise unaccepted by the consignee of such alcoholic beverages, such common carrier or insurance company shall become liable for the tax imposed under this chapter, unless proof deemed satisfactory to the commissioner is furnished to the commissioner by such carrier or insurer showing that such alcoholic beverages have been destroyed or shipped to a point without this state and, therefore, have not been sold or consumed in this state.

History.

Acts 1971, ch. 150, § 1; T.C.A., § 57-169.

57-4-308. Violation a misdemeanor.

Any violation of this chapter is a misdemeanor and punishable as such.

History.

Acts 1967, ch. 211, § 3; T.C.A., § 57-163.

Compiler's Notes.

The misdemeanor penalty provisions in this section may have been affected by the Criminal Sentencing Reform Act of 1989. See §§ 39-11-114, 40-35-110, 40-35-111.

CHAPTER 5

BEER

Part 1. General Provisions

Section
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PART 1

GENERAL PROVISIONS

57-5-101. Traffic in alcoholic beverages of less than eight percent (8%) permitted — Brewers' and wholesalers' interests restricted.

(a)(1) It is lawful in this state to transport, store, sell, distribute, possess, receive, or manufacture beer, as defined in subsection (b), subject to the privilege taxes and regulations set out and provided for in this part.

(2) Except as otherwise provided for in this part, no brewer or manufacturer of beer shall have any financial or ownership interest, direct or indirect, in the business of or a building containing a wholesale or retail licensee, including to furnish or loan any fixtures of any kind to a retail licensee, and no such brewer or manufacturer shall hold a wholesale or retail license. For purposes of this section, an indirect interest includes any interest acquired by affiliates, subsidiaries, corporate officials, partners, or employees of the brewer or manufacturer.

(3) Except as otherwise provided for in this part, no wholesaler shall hold

any financial or ownership interest, direct or indirect, in the business of or a building containing a brewer, manufacturer, or retail licensee, including to furnish or loan any fixtures of any kind to a retail licensee, and no such wholesaler shall hold a manufacturer or retail license.

(b) For purposes of this title, "beer" means beer, ale or other malt beverages, or any other beverages having an alcoholic content of not more than eight percent (8%) by weight, except wine as defined in § 57-3-101; provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol.

(c)(1) Upon meeting necessary federal, state and local license requirements, notwithstanding the prohibition of subsection (a), a manufacturer:

(A) May operate as a retailer at the manufacturer's location or a site contiguous thereto for sales of not more than twenty-five thousand (25,000) barrels of beer or high alcohol content beer or both annually for consumption on or off the premises under this chapter as long as the requirements of this chapter concerning the licensing of such retail establishments are met; and

(B) May qualify for and hold a license:

(i) Under chapter 4 of this title as a "restaurant" or "limited service restaurant"; provided, that notwithstanding chapter 4 of this title related to restrictions or prohibitions on licensees under chapter 4, a restaurant or limited service restaurant may sell for off-premises consumption beer manufactured pursuant to this section at such location or at any other restaurant or limited service restaurant licensed under chapter 4 that is owned by the same person; or

(ii) As a hotel as defined under § 57-4-102(21)(F)(iii); provided, that the hotel licensee shall only sell beer manufactured pursuant to this section on the premises of the hotel.

(2) A manufacturer operating as a retailer pursuant to subdivision (c)(1)(A) may not sell its beer directly to retailers that are located in a county other than the county in which the manufacturer is located. Notwithstanding any law to the contrary, any transfer or sale by a manufacturer operating as a retailer to an off-site retailer's location shall constitute a wholesale sale.

(d) Notwithstanding the prohibitions and restrictions on a manufacturer's financial and ownership interests imposed in subsection (a), a manufacturer may have a financial or ownership interest in a licensed wholesaler's business; provided, however, that the financial or ownership interest in the licensed wholesaler's business is maintained or held only for a one-time period not to exceed five (5) years, which may not be directly or indirectly extended or renewed, and only under the following circumstances and conditions:

(1) When a licensed wholesaler is voluntarily selling its distribution rights, and the manufacturer whose brand distribution rights are being sold seeks to assist the sale by taking a noncontrolling financial interest in the purchasing wholesaler in the form of a loan made contemporaneous with the sale and secured by the inventory and assets, except for the corporate stock, of the purchasing wholesaler; or

(2) When, only for reasons permitted under § 57-5-505, § 57-5-506, or § 57-5-507, a distribution agreement between a manufacturer and a whole-

saler is not renewed or is otherwise terminated, cancelled, or discontinued, in which event a manufacturer is authorized to appoint a temporary licensed wholesaler to service the manufacturer's brands in the designated sales territory and to take a financial or ownership interest in the temporary licensed wholesaler in connection with the appointment.

(e)(1) Notwithstanding this section to the contrary, a wholesaler that has continuously held a valid wholesale distribution permit, issued pursuant to this section for a period of at least six (6) months prior to March 27, 2015, and has held a direct or indirect interest in a brewer or manufacturer, continuously during that period of time, and holds a trademark or marketing rights to a brand or brands of beer, may continue to hold the interest, and may expand the interest to effect the brewing, bottling, and sales of beer in which the wholesaler holds the trademark or marketing rights.

(2) It is the intent of the general assembly that this subsection (e) be prospective only and not be applicable to compel the divestiture of trademark or marketing rights or a direct or indirect interest held by a wholesaler for the six-month period prior to March 27, 2015.

(f) For purposes of this section, "manufacturer" means:

(1) A holder of a license to manufacture or import beer;

(2) An officer, director, agent, or employee of such a license holder; or

(3) An affiliate of such a license holder, regardless of whether the affiliation is corporate or by management, direction, or control.

History.

Acts 1933, ch. 69, § 1; 1935, ch. 170, § 2; C. Supp. 1950, § 1191.1; T.C.A. (orig. ed.), § 57-201; Acts 1983, ch. 229, § 7; 1990, ch. 906, § 1; 1991, ch. 214, §§ 1, 2; 1992, ch. 800, §§ 1, 2; 1993, ch. 227, § 1; 1993, ch. 297, § 1; 1995, ch. 395, §§ 1-6; 2004, ch. 956, §§ 1, 2; 2005, ch. 298, §§ 2, 3; 2009, ch. 290, §§ 1, 2; 2013, ch. 386, §§ 1, 3; 2014, ch. 861, §§ 2, 17. 2015, ch. 19, §§ 1, 2; 2015, ch. 176, § 1.

Compiler's Notes.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Cross-References.

Privilege tax on manufacture of intoxicants with alcoholic content of more than five percent, §§ 57-2-101, 57-2-102.

Textbooks.

Tennessee Jurisprudence, 7 Tenn. Juris., Contracts, § 117; 16 Tenn. Juris., Intoxicating Liquors, §§ 5, 6, 9, 28.

Law Reviews.

Preferences, Priorities, and Powers of the State in the Collection of Delinquent Revenue: Tennessee's Tax Enforcement Procedures Act (Donald J. Serkin), 8 Mem. St. U.L. Rev. 707.

Attorney General Opinions.

Fees for background checks of employees of beer licensees, OAG 97-077 (5/21/97).

A beer manufacturer may operate as a retailer under T.C.A. § 57-5-101(c)(1)(A) and at the same time hold a restaurant license pursuant to T.C.A. § 57-5-101(c)(1)(B), OAG 00-087 (5/5/00).

If a beer manufacturer holds a restaurant permit under the provisions of title 57, chapter 4, as allowed by T.C.A. § 57-5-101(c)(1)(B), it will also be able to obtain a retail beer permit for the restaurant premises, OAG 00-087 (5/5/00).

A beer manufacturer may not sell, give, or otherwise transfer beer to a beer retailer or restaurant that sells beer where the manufacturer has a direct or indirect interest in the retailer or restaurant, OAG 00-087 (5/5/00).

The statute prohibits the sale of beer by a manufacturer at a site it owns that is noncontiguous with its manufacturing facility, OAG 00-087 (5/5/00).

The statute does not allow for different distance standards to be adopted and applied to different types of establishments that sell beer; only one distance standard may be established and it must apply to all establishments selling beer, whether for consumption on or off the premises, OAG 01-157 (10/25/01).

NOTES TO DECISIONS

Analysis

1. Nature and Effect.
2. Relation to Liquor Statutes.

1. Nature and Effect.

This chapter does not confer an absolute right on everyone to sell beer, but restricts it to those who obtain permits to pay the required tax. McHenry v. State, 168 Tenn. 667, 80 S.W.2d 655, 1934 Tenn. LEXIS 97 (1935).

The burden of proof is on the defendant charged with selling intoxicating liquor to show that liquor sold constitutes "beer or other like beverage." McHenry v. State, 168 Tenn. 667, 80 S.W.2d 655, 1934 Tenn. LEXIS 97 (1935).

This chapter is in the nature of a local option law in that the legislature intended that each municipality looking to the morals and general welfare of its citizens should have a wide discretion not only regulating the traffic in beer but in determining to whom licenses should be issued for that purpose. Cravens v. Storie, 175 Tenn. 285, 133 S.W.2d 609, 1939 Tenn. LEXIS 39 (1939).

This chapter is dual in character in that it is both a police power measure and a revenue measure. Henderson v. Grundy County Beer Committee, 176 Tenn. 397, 141 S.W.2d 901, 1939 Tenn. LEXIS 130 (1940).

Since this section expressly legalizes the receipt and possession of beer subject to the regulations of this chapter and this chapter prescribes no regulations for the receipt and possession thereof, such receipt and possession cannot be considered illegal. Holbert v. State, 178 Tenn. 80, 156 S.W.2d 388, 1941 Tenn. LEXIS 33 (1941).

The beer statutes do not confer absolute rights but are conditional and in effect are local option statutes. Grubb v. Morristown, 185 Tenn. 114, 203 S.W.2d 593, 1947 Tenn. LEXIS 310 (1947); State ex rel. Camper v. Pollard, 189 Tenn. 86, 222 S.W.2d 374, 1949 Tenn. LEXIS 404 (1949), superseded by statute as stated in, Howard v. Willocks, 525 S.W.2d 132, 1975 Tenn. LEXIS 652 (Tenn. 1975).

The business of selling beer is subject to unlimited restrictions and such restrictions even to the extent of a prohibition are not "unreasonably oppressive," or discriminatory, and do not violate any civil right of beer licensees. Grubb v. Morristown, 185 Tenn. 114, 203 S.W.2d 593, 1947 Tenn. LEXIS 310 (1947); Ketner v. Clabo, 189 Tenn. 260, 225 S.W.2d 54, 1949 Tenn. LEXIS 423 (1949).

The statute leaves large discretion to the local authorities in the issuance and revocation of permits. Fentress County Beer Board v. Cravens, 209 Tenn. 679, 356 S.W.2d 260, 1962 Tenn. LEXIS 404 (1962).

Amendment to T.C.A. § 57-5-105 (formerly 57-205), giving courts the right to review a municipality's refusal of a permit to sell beer through the statutory writ of certiorari, with trial de novo, does not make it mandatory upon a municipality to grant more permits than the city deems advisable. De Caro v. Collierville, 213 Tenn. 254, 373 S.W.2d 466, 1963 Tenn. LEXIS 485 (1963).

In denying a permit to sell beer to a grocery store, based upon the feeling that the morals and general welfare of the city would best be served by limiting the number of permits granted, the municipal beer board did not act arbitrarily and discriminatorily. De Caro v. Collierville, 213 Tenn. 254, 373 S.W.2d 466, 1963 Tenn. LEXIS 485 (1963).

City and county beer board had no authority to deny a company's second license application on the basis that its new building contravened Metro. Gov't Nashville & Davidson County, Tenn., Code Laws § 7.08.090(A)(1)'s 100-foot proximity requirement because doing so contravened T.C.A. § 57-9-105 as amended and exceeded the board's statutory authority. Exxonmobil Oil Corp. v. Metro. Gov't of Nashville & Davidson County, 246 S.W.3d 31, 2005 Tenn. App. LEXIS 375 (Tenn. Ct. App. June 28, 2005), appeal denied, — S.W.3d —, 2005 Tenn. LEXIS 1143 (Tenn. 2005).

2. Relation to Liquor Statutes.

Where, prior to obtaining a license to sell beer, the licensee, within the period of 10 years, was guilty of violation of the former "bone dry law," such fact did not operate to revoke his license to sell beer, thus rendering him liable for selling beer without a license so to do. Richmond v. State, 171 Tenn. 1, 100 S.W.2d 1, 1936 Tenn. LEXIS 52 (1936).

Conviction for the receipt and possession of intoxicating liquor could not be supported by evidence that defendant was storing beer for purposes of sale without complying with the provisions of this chapter. Holbert v. State, 178 Tenn. 80, 156 S.W.2d 388, 1941 Tenn. LEXIS 33 (1941).

The provisions of this chapter regulating storage and possession of beer did not repeal § 57-9-111 outlining procedure for recovery of seized beer by owners. Young v. Chumley, 189 Tenn. 322, 225 S.W.2d 77, 1949 Tenn. LEXIS 432 (1949).

57-5-102. Registration of manufacturers and wholesale distributors.

(a) Every person, firm, corporation, joint-stock company, syndicate or asso-

ciation in this state engaging in the manufacture or wholesale distribution of beer shall be required to first register its name and address, by mail or in person, at the office of the commissioner of revenue and to receive and keep posted at its usual place of business a certificate of registration bearing a serial number, which serial number shall be assigned to such person, firm, corporation, joint-stock company, syndicate or association in this state by the commissioner. The registration shall be made and certificate of registration received and posted before commencement of any business as described herein.

(b) Cost of such registration is fixed at twenty dollars ($20.00) for wholesalers and forty dollars ($40.00) for manufacturers, to be paid by the applicant before a certificate is issued. Such certificate must be renewed annually on or before January 1, upon the payment of the aforementioned registration fees.

(c) Any person required by this section to be registered who shall fail to register with the commissioner within twenty (20) days after entering business, or who shall fail to obtain a renewal of such registration for the current year by January 20 thereof, shall have added to the cost of registration a specific penalty of five dollars ($5.00) a month for each month or fractional part thereof during which such failure continues, but not to exceed an amount equal to the registration fee.

(d) The proceeds of these fees shall be divided equally, one-half (½) to the department and one-half (½) to the Tennessee highway patrol, and shall be accredited to the expendable receipts account of such departments in order that same may be available for the purpose of enforcing this chapter.

(e) In addition to the specific mandatory penalty provided for hereinabove, any person who shall engage in any business or activity for which a certificate of registration is knowingly required from the commissioner under this chapter without first having obtained such a certificate, or who, having obtained such a certificate, shall continue to engage in and/or conduct such business or activity after such certificate shall have been revoked or who does so during a suspension thereof, shall be liable to a discretionary penalty of not more than one hundred dollars ($100) to be imposed by the commissioner at the commissioner's discretion. Such penalty shall be collected in the manner otherwise provided for the collection of taxes and penalties and distributed in the manner provided hereinabove. Each day that such business or activity is so engaged in or conducted may be deemed a separate offense by the commissioner at the commissioner's discretion upon determination that the circumstances warrant.

(f) Every person, firm, corporation, joint-stock company, syndicate or association, before being permitted to store, sell, distribute and/or manufacture beer shall pay such license, and comply with such regulations and ordinances as may be passed by the county courts of the counties and/or enacted by the proper municipal authorities of the cities or towns where such person, firm, corporation, joint-stock company, syndicate or association may do business in the manner hereinafter provided.

History.
Acts 1933, ch. 69, § 5; 1937, ch. 198, § 1; 1943, ch. 53, § 1; mod. C. Supp. 1950, § 1191.5; impl. am. Acts 1959, ch. 9, § 14; Acts 1972, ch. 448, § 1; 1973, ch. 68, § 6; 1974, ch. 478, § 1; T.C.A. (orig. ed.), § 57-202; Acts 1985, ch. 315, § 1; 1993, ch. 297, § 2.

57-5-103. Permit from county or city required — Classification of counties — Purchases of beer "for resale."

(a)(1) It is unlawful to operate any business engaged in the sale, distribution, manufacture, or storage of beer without a permit issued by the county or city where such business is located under the authority herein delegated to counties and cities.

(2) Permits shall be issued to the owner of the business or other entity responsible for the premises for which the permit is sought, whether a person, firm, corporation, joint-stock company, syndicate, association, or local governmental entity where the governing body has authorized such sales of beer.

(3) A permit shall be valid:

(A) Only for the owner to whom the permit is issued and cannot be transferred to another owner. If the owner is a corporation, a change in ownership shall occur when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner;

(B) Only for a single location, except as provided in subdivision (a)(4), and cannot be transferred to another location. A permit shall be valid for all decks, patios and other outdoor serving areas that are contiguous to the exterior of the building in which the business is located and that are operated by the business; and

(C) Only for a business operating under the name identified in the permit application.

(4) Where an owner operates two (2) or more restaurants or other businesses within the same building, the owner may in the owner's discretion operate some or all such businesses pursuant to the same permit.

(5) A business can sell beer for both on-premises and off-premises consumption at the same location pursuant to one (1) permit.

(6) A permit holder must return a permit to the county or city that issued it within fifteen (15) days of termination of the business, change in ownership, relocation of the business or change of the business's name; provided, that notwithstanding the failure to return a beer permit, a permit shall expire on termination of the business, change in ownership, relocation of the business or change of the business's name.

(7) In the case of beer wholesalers, as defined in § 57-6-102, no county or city shall require a permit from a wholesaler unless such wholesaler operates a warehouse in such county or city.

(8) Any person, firm, corporation, joint-stock company, syndicate, or association engaged in the sale, distribution, or manufacture of beer without the permit required by this part commits a Class A misdemeanor.

(9) Nothing in this chapter shall be construed as granting counties or cities the authority to require the periodic renewal of beer permits.

(10) After July 1, 2015, a city or county shall not issue a permit under this chapter unless the applicant has been a citizen or lawful resident of the

United States for not less than one (1) year immediately preceding the date upon which the application is made to the city or county.

(b) For the purpose of licensing, regulating and controlling the transportation, storage, sale, distribution, possession, receipt and/or manufacture of beer pursuant to this chapter, the counties of the state shall be classified in two (2) categories, one (1) of which is hereby designated Class A counties consisting of those counties not governed by metropolitan governments as defined in § 7-2-101, and the other category is hereby designated Class B counties consisting of those counties governed by metropolitan governments as defined in § 7-2-101.

(c) When either "county" or "counties" is used in this chapter, it means counties generally without reference to the classification of counties provided for in this section, and the use of "county" or "counties" shall cause the provision limited by the word "county" or "counties" to apply equally to Class A counties and to Class B counties. When "county legislative body" or "county legislative bodies" is used in this chapter, it means "metropolitan council" or "metropolitan councils" when applicable to Class B counties.

(d)(1) It is unlawful for any person to sell, distribute or manufacture beer without having a valid certificate indicating that purchases of beer by that person are "for resale" as that term is used in § 67-6-102(75)(A).

(2) Within ten (10) days after being issued a permit to sell, distribute or manufacture beer, a person shall file with the county or city issuing the permit and with each person from whom the person buys beer a copy of a valid certificate indicating that the purchases of beer are "for resale" as that term is used in § 67-6-102(75)(A), and shall subsequently maintain at all times a valid resale certificate on file with the county or city issuing the permit and with each person from whom the person buys beer.

(e) A city or county is authorized to seek criminal history background or fingerprint checks on applicants. Criminal background checks may include fingerprint checks against state and federal criminal records maintained by the Tennessee bureau of investigation and the federal bureau of investigation. The Tennessee bureau of investigation is authorized to assess fees for the searches in accordance with the fee schedule established by the bureaus.

History.

Acts 1933, ch. 69, § 9c; C. Supp. 1950, § 1191.12; Acts 1963, ch. 76, § 1; 1965, ch. 321, § 1; 1974, ch. 478, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 57-204; Acts 1983, ch. 386, § 1; 1987, ch. 254, § 1; 1991, ch. 424, § 1; 1993, ch. 297, § 4; T.C.A., § 57-5-104; Acts 1996, ch. 641, § 2; 2009, ch. 314, § 1; 2010, ch. 1002, § 1; 2014, ch. 754, § 1; 2015, ch. 29, § 1; 2018, ch. 944, § 3.

Compiler's Notes.

Former § 57-5-103, concerning permits to aliens, was transferred to § 57-5-104 in 1993.

Pursuant to Article III, Section 18 of the Constitution of Tennessee, Acts 2014, ch. 754 took effect on April 21, 2014.

Amendments.

The 2018 amendment substituted "local governmental entity" for "governmental entity" in (a)(2).

Effective Dates.

Acts 2018, ch. 944, § 4. May 15, 2018.

Cross-References.

Penalty for Class A misdemeanor, § 40-35-111.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 5-7, 9, 10, 16, 21.

Law Reviews.

Judicial Review and the Uniform Administrative Procedures Act (Toxey H. Sewell), 6 Mem. St. U.L. Rev. 253.

Attorney General Opinions.

A clubhouse or restaurant beer permit holder

located on a golf course cannot sell beer to individuals on the course itself, away from the building, under any circumstances, OAG 01-117 (7/24/01).

Prohibiting the sale of beer through drive-up windows. OAG 10-113, 2010 Tenn. AG LEXIS 119 (11/18/10).

As a municipal corporation the city of Clarksville cannot obtain a license to sell liquor by the drink at any location or sell alcoholic beverages or beer to either private party lessees and guests or to the general public; no city employee or nonprofit corporation created or controlled by the city may obtain a permit to sell liquor by the drink or obtain a beer permit on behalf of the city. OAG 14-03, 2014 Tenn. AG LEXIS 5 (1/9/14)

The durational citizenship/residency requirement imposed by 2015 Tenn. Pub. Acts, Chapter 29 for the issuance of a beer permit is unlikely to pass constitutional muster. OAG 16-09, 2016 Tenn. AG LEXIS 9 (3/4/2016).

NOTES TO DECISIONS

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1. Nature of Permit.
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10. State's Power to Regulate Establishments Holding a Permit.

1. Nature of Permit.

A permit to engage in the manufacture or sale of beer or other intoxicating liquors is in the nature of a mere permit which creates no vested or property rights, and the traffic is at all times subject to the control of the state, or by delegation of its power to its political subdivisions such as counties or municipalities, in the exercise of the police power. Henderson v. Grundy County Beer Committee, 176 Tenn. 397, 141 S.W.2d 901, 1939 Tenn. LEXIS 130 (1940).

2. Persons Required to Obtain Permit.

Person employed by licensee to operate business in consideration of 50 percent of profits realized from business was not required to obtain a license, since sharing in profits was not sufficient to change status from that of employee to that of partner. Stewart v. State, 190 Tenn. 334, 229 S.W.2d 504, 1950 Tenn. LEXIS 489 (1950).

3. Issuance of Permit.

Refusal of beer committee to sign or authorize the issuance of a beer license did not invade the constitutional rights of the individual seeking such license. State ex rel. Cravens v. Delk, 175 Tenn. 614, 136 S.W.2d 524, 1939 Tenn. LEXIS 81 (1940).

There is nothing in this chapter making it mandatory upon any beer board or licensing authority to issue a beer permit or whiskey license to anyone. Grubb v. Morristown, 185 Tenn. 114, 203 S.W.2d 593, 1947 Tenn. LEXIS 310 (1947); Ketner v. Clabo, 189 Tenn. 260, 225 S.W.2d 54, 1949 Tenn. LEXIS 423 (1949). See State ex rel. Camper v. Pollard, 189 Tenn. 86, 222 S.W.2d 374, 1949 Tenn. LEXIS 404 (1949), superseded by statute as stated in, Howard v. Willocks, 525 S.W.2d 132, 1975 Tenn. LEXIS 652 (Tenn. 1975).

Municipality has absolute discretion in regulation and control of beer permits. Ketner v. Clabo, 189 Tenn. 260, 225 S.W.2d 54, 1949 Tenn. LEXIS 423 (1949).

A city does not have more power than a county to issue licenses, but does have more power to place restrictions upon the issuance of licenses. Mapco Petroleum, Inc. v. Basden, 774 S.W.2d 598, 1989 Tenn. LEXIS 393 (Tenn. 1989).

4. —Hearing.

Applicant for beer permit was not entitled to a formal hearing before beer committee since legislature, by providing for hearing on revocation of permit and not providing for a hearing on an application for a permit, indicated that it did not intend to grant applicant a hearing on application for a permit. State ex rel. Camper v. Pollard, 189 Tenn. 86, 222 S.W.2d 374, 1949 Tenn. LEXIS 404 (1949), superseded by statute as stated in, Howard v. Willocks, 525 S.W.2d 132, 1975 Tenn. LEXIS 652 (Tenn. 1975).

5. —Mandamus.

Mandamus would not lie to force the beer committee of a county legislative body to authorize the issuance of a beer license where there was no showing that the committee acted illegally or arbitrarily. State ex rel. Cravens v. Delk, 175 Tenn. 614, 136 S.W.2d 524, 1939 Tenn. LEXIS 81 (1940).

Mandamus to compel county beer committee to issue license was refused where there was no evidence showing an abuse of discretion by beer committee in refusing license. State ex rel. Simmons v. Latimer, 186 Tenn. 577, 212 S.W.2d 386, 1948 Tenn. LEXIS 583 (1948).

Beer committee cannot be compelled to issue beer permit by a writ of mandamus. State ex rel. Camper v. Pollard, 189 Tenn. 86, 222 S.W.2d 374, 1949 Tenn. LEXIS 404 (1949), superseded by statute as stated in, Howard v. Willocks, 525 S.W.2d 132, 1975 Tenn. LEXIS 652 (Tenn. 1975); Ketner v. Clabo, 189 Tenn.

260, 225 S.W.2d 54, 1949 Tenn. LEXIS 423 (1949).

6. — —Attorney's Fees.

Attorney representing beer committee on appeal of proceeding in mandamus by applicant who was refused a permit was required to present matter of fee to county legislative body since county was not before the supreme court. State ex rel. Camper v. Pollard, 189 Tenn. 86, 222 S.W.2d 374, 1949 Tenn. LEXIS 404 (1949), superseded by statute as stated in, Howard v. Willocks, 525 S.W.2d 132, 1975 Tenn. LEXIS 652 (Tenn. 1975).

7. —Review.

Beer committees and similar boards and commissions are vested with large discretion and the courts will not review their action unless it appears that they have acted arbitrarily or illegally. State ex rel. Cravens v. Delk, 175 Tenn. 614, 136 S.W.2d 524, 1939 Tenn. LEXIS 81 (1940); State ex rel. Burkhart v. Coldwell, 185 Tenn. 572, 206 S.W.2d 795, 1947 Tenn. LEXIS 358 (1947).

The issuance or denial of beer permits, either by the county legislature bodies, or committees appointed by such bodies, or municipalities, or investigating boards, shall not be reviewed by a de novo hearing in the circuit or chancery courts of the state. Owings v. Wasson, 188 Tenn. 416, 219 S.W.2d 908, 1949 Tenn. LEXIS 354 (1949).

The action of a board or commission in denying an application for a permit to sell beer, pursuant to this chapter may be reviewed only by the common-law writ of certiorari, and not by the statutory writ provided in title 27, ch. 9. Owings v. Wasson, 188 Tenn. 416, 219 S.W.2d 908, 1949 Tenn. LEXIS 354 (1949).

8. Use of Another's Permit.

Sale of beer by defendant under a permit issued another person who had formerly operated place did not make defendant's sale of beer legal. McBride v. State, 195 Tenn. 308, 259 S.W.2d 533, 1953 Tenn. LEXIS 341 (1953).

9. Transferability of Permits.

A permit to sell beer is not transferable by merger and does not pass to a surviving corporation, and a new permit must be sought in the name of the new entity. Mapco Petroleum, Inc. v. Basden, 774 S.W.2d 598, 1989 Tenn. LEXIS 393 (Tenn. 1989).

10. State's Power to Regulate Establishments Holding a Permit.

The state has the power to prohibit certain acts involving exposure of parts of the body and to restrict the area where performers may perform in establishments holding a beer license, under U.S. const., amend. 21, and under New York State Liquor Auth. v. Bellanca, 452 U.S. 714, 101 S. Ct. 2599, 69 L. Ed. 2d 357, 1981 U.S. LEXIS 119 (1981). PP & C, Inc. v. Metropolitan Beer Permit Bd., 833 S.W.2d 90, 1992 Tenn. App. LEXIS 91 (Tenn. Ct. App. 1992).

A metropolitan government need only have a rational basis for its decision to prohibit certain acts in establishments selling beer when the same prohibition does not extend to all public places. PP & C, Inc. v. Metropolitan Beer Permit Bd., 833 S.W.2d 90, 1992 Tenn. App. LEXIS 91 (Tenn. Ct. App. 1992).

57-5-104. Application fee — Privilege tax — Permits.

(a) Each applicant for a permit required by § 57-5-103 shall be required to pay an application fee of two hundred fifty dollars ($250) to the county or city in which the applicant's place of business is located. No portion of the fee shall be refunded to the applicant, notwithstanding whether an application is approved or denied.

(b)(1) There is hereby imposed on the business of selling, distributing, storing or manufacturing beer in this state a privilege tax of one hundred dollars ($100), notwithstanding § 57-6-112.

(2) Any person, firm, corporation, joint-stock company, syndicate or association engaged in selling, distributing, storing or manufacturing beer shall remit the tax on January 1 to the county or city in which such business is located. The tax shall be remitted to the county clerk for businesses located in the county outside the incorporated limits of any city or town, and to the official identified by the city or town in the notice required by subdivision (b)(3) for businesses located within the incorporated limits of the city or town.

(3) Counties and cities shall mail written notice to each permit holder of the payment date of the annual tax at least thirty (30) days prior to January

1. Notice shall be mailed to the address specified by the permit holder on its permit application. If a permit holder does not pay the tax by January 31 or within thirty (30) days after written notice of the tax was mailed, whichever is later, then the county or city shall notify the permit holder by certified mail that the tax payment is past due. If a permit holder does not pay the tax within ten (10) days after receiving notice of its delinquency by certified mail, then the county or city may suspend or revoke the permit or impose a civil penalty pursuant to § 57-5-108.

(4) Counties, cities or towns may utilize these tax funds for any public purpose.

(5) At the time a new permit is issued to any business subject to this tax, the permit holder shall be required to pay the privilege tax on a prorated basis for each month or portion thereof remaining until the next tax payment date.

History.

Acts 1933, ch. 69, § 9b; C. Supp. 1950, § 1191.11; T.C.A. (orig. ed.), § 57-203; Acts 1989, ch. 591, § 113; T.C.A., § 57-5-103; Acts 1993, ch. 297, § 3; 1995, ch. 124, §§ 1, 2; 1996, ch. 641, §§ 3, 4.

Compiler's Notes.

Former § 57-5-104, concerning county and city alcoholic beverage permits, was transferred to § 57-5-103 in 1993.

Attorney General Opinions.

Constitutionality, OAG 94-064 (4/28/94).

57-5-105. Licenses or permits to sell outside of town or city limits — Applications — Temporary permits — Hearings.

(a) The owner of a business desiring to sell, distribute, manufacture, or store beer in any Class A county outside the limits of any incorporated city or town shall file an application for a permit with the county legislative body or a committee appointed by the county legislative body.

(b) In order to receive a permit, an applicant must establish that:

(1) No beer will be sold except at places where such sale will not cause congestion of traffic or interference with schools, churches, or other places of public gathering, or otherwise interfere with public health, safety and morals, the county legislative body having the right to forbid such storage, sale or manufacture at places within two thousand feet (2,000′) of such places of public gatherings in its discretion. Nothing in this subdivision (b)(1) shall apply to places of business that are located in the terminal or main building at public airports serviced by commercial airlines with regularly scheduled flights;

(2) No sale shall be made to minors;

(3) No person, firm, corporation, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the applicant has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance or controlled substance analogue, or any crime involving moral turpitude within the past ten (10) years;

(4) No person employed by the applicant in such distribution or sale has been convicted of any violation of the laws against possession, sale, manu-

facture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance that is listed in Schedules I through V in title 39, chapter 17, part 4, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance analogue, or any crime involving moral turpitude within the past ten (10) years; and

(5) No sale shall be made for on-premise consumption unless the application so states.

(c) An applicant shall disclose the following information in the application:

(1) Name of the applicant;

(2) Name of applicant's business;

(3) Location of business by street address or other geographical description to permit an accurate determination of conformity with the requirements of this section;

(4) If beer will be sold at two (2) or more restaurants or other businesses pursuant to the same permit as provided by § 57-5-103(a)(4), a description of all such businesses;

(5) Persons, firms, corporations, joint-stock companies, syndicates, or associations having at least a five percent (5%) ownership interest in the applicant;

(6) Identity and address of a representative to receive annual tax notices and any other communication from the county legislative body or its committee;

(7) That no person, firm, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the applicant nor any person to be employed in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years;

(8) Whether or not the applicant is seeking a permit which would allow the sale of beer either for on-premises consumption or for off-premises consumption, or both of the foregoing. If a holder of a beer permit for either off-premises consumption or on-premises consumption desires to change the permit holder's method of sale, the permit holder shall apply to the county legislative body or committee appointed by such body for a new permit; and

(9) Such other relevant information as may be required by the county legislative body or its committee. An applicant or permit holder shall be required to amend or supplement its application promptly if a change in circumstances affects the responses provided in its application.

(d) Any applicant making a false statement in the application shall forfeit such applicant's permit and shall not be eligible to receive any permit for a period of ten (10) years.

(e) Any applicant seeking a license or permit under this section and who complies with the conditions and provisions of this section shall have issued to such applicant the necessary license or permit, and in the event the license or permit is refused, the applicant shall be entitled to a hearing on the application for the issuance of a license or permit. The refusal to grant a license or permit,

or the refusal to grant a hearing upon a person's application for a license or permit, may be reviewed by the circuit or chancery court in the manner as authorized under § 57-5-108.

(f) Before any county legislative body or committee appointed by the county legislative body shall issue a license or permit under this section, it may cause to be published in a newspaper of general circulation a notice in which the name of the applicant and the address of the location for such license or permit, whether the application is for the sale of alcoholic beverages for on-premises consumption and the date and time of its meeting at which such application shall be considered. Such meeting shall be a public hearing for the purpose of hearing the statement of any person or such person's attorney on any application for a license or permit.

(g)(1) Temporary beer licenses or permits not to exceed thirty (30) days' duration may be issued at the request of the applicant upon the same conditions governing permanent permits. Such a temporary license or permit shall not allow the sale, storage or manufacture of beer on publicly owned property.

(2) Notwithstanding the prohibition concerning beer sales on publicly owned property in this subsection (g), in Class B counties and counties having a population in excess of three hundred thousand (300,000), according to the 2000 federal census or any subsequent federal census a temporary permit authorizing the sale of beer on public property may be issued to a bona fide charitable or nonprofit or political organization as defined in § 57-4-102, subject to the approval of the appropriate governmental authority charged with the management of such publicly owned property and the approval of the county beer board.

(3) Notwithstanding the prohibition concerning beer sales on publicly owned property in this subsection (g), a county authorized to issue a permit under § 57-5-106(c) may issue a temporary permit authorizing the sale of beer on public property.

(h) Where a permit or license has been refused three (3) times, the applicant shall not be allowed to apply again for a permit or license on the same premises until after the expiration of one (1) year from the date of the third refusal and only if the circumstances have substantially changed. Nothing in this subsection (h) shall be construed as prohibiting or in any manner limiting the right of any refusal to be reviewed by the circuit or chancery court in the manner as authorized under § 57-5-108.

(i) Class A counties, by resolution of their county legislative bodies, may forbid the sale of beer within three hundred feet (300′) of a residential dwelling, measured from building to building; provided, that the owner of the residential dwelling appears in person before the county beer board and objects to the issuance of such permit or license. This subsection (i) shall not apply to locations where beer permits or licenses have been issued prior to the date of adoption of such a resolution by the county legislative body, or to an application for a change in the licensee or permittee at such locations.

(j) A county legislative body may impose training or certification restrictions or requirements on employees of a permit holder, but such restrictions or requirements shall not apply to any employee who is possessed of a server

permit issued by the alcoholic beverage commission pursuant to chapter 3, part 7 of this title.

(k) When a permit or license has been denied based on the testimony of a person at the hearing which caused the county to deny the permit or license, the beer board or other appropriate governing body shall notify the person who testified if the applicant seeks a permit or license again at the same location within twelve (12) months. The person who testified may submit the person's remarks in writing to the beer board or other appropriate governing body at any additional hearing in lieu of making a physical appearance to testify.

History.

Acts 1933, ch. 69, § 10; 1935, ch. 170, § 4; C. Supp. 1950, § 1191.14; Acts 1961, ch. 105, § 1; 1965, ch. 321, § 2; 1968, ch. 517, § 1; 1972, ch. 637, § 1; 1975, ch. 242, § 1; 1975, ch. 363, §§ 1, 2; 1976, ch. 713, § 1; 1977, ch. 340, § 1; 1978, ch. 637, § 1; 1978, ch. 799, § 1; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 57-205; Acts 1980, ch. 909, § 1; 1983, ch. 386, §§ 2-5; 1984, ch. 610, § 1; 1987, ch. 74, §§ 1-3; 1993, ch. 297, § 5; 1995, ch. 252, § 1; 1995, ch. 396, § 7; 2004, ch. 598, § 1; 2005, ch. 294, §§ 1, 2; 2012, ch. 848, §§ 61, 62; 2016, ch. 654, §§ 1, 2; 2018, ch. 944, § 2.

Compiler's Notes.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Amendments.

The 2018 amendment added (g)(3).

Effective Dates.

Acts 2018, ch. 944, § 4. May 15, 2018.

Textbooks.

Tennessee Jurisprudence, 3 Tenn. Juris., Attorney General, § 3; 16 Tenn. Juris., Intoxicating Liquors, §§ 2-9, 12, 22; 19 Tenn. Juris., Municipal Corporations, § 52.

Law Reviews.

Constitutional Protection of Aliens, 40 Tenn. L. Rev. 235.

Attorney General Opinions.

Whether a public cemetery constitutes a public gathering place, OAG 91-57 (6/10/91).

Public cemetery may constitute a public gathering place, OAG 92-51 (9/16/92).

Distance requirements for beer sales in Washington County, OAG 94-110 (10/6/94).

Authority of board, committee, or individual members to revoke beer permits, OAG 97-060 (5/1/97).

Private day care center as place of public gathering, 98-069 (3/25/98).

Applicability of local beer permit ordinance to liquor-by-the-drink license holders, OAG 99-098 (4/30/99).

The statute does not allow for different distance standards to be adopted and applied to different types of establishments that sell beer; only one distance standard may be established and it must apply to all establishments selling beer, whether for consumption on or off the premises, OAG 01-157 (10/25/01).

A beer board may not revoke a beer permit solely on the basis that the business is located within 2,000 feet of a church, if the church was built after the business was granted the permit, OAG 02-061 (5/8/02).

A county that has enacted an ordinance that prohibits the sale, storage, or manufacture of beer within 2,000 feet of a church, school, or other place of public gathering may amend the ordinance to protect the beer permits of businesses that have places of public gathering built within 2,000 feet of their premises after the issuance of their beer permits, although such an amendment is probably unnecessary, OAG 02-061 (5/8/02).

Different distance requirements for the sale of beer for different sections of a city would be permissible so long as the different sections are well defined and permit holders or permit applicants within each section are treated the same, OAG 02-092 (8/28/02).

If a county legislative body had passed a resolution prohibiting the issuance of a beer permit for locations within two thousand feet of schools, churches, or other places of public gathering, and later issued permits in violation of such distance requirement, could not at a later date readopt such a distance restriction, the effect of which would basically grandfather all such permits without revoking all permits issued in violation of the earlier adopted distance, OAG 04-012 (2/03/04).

A county legislative body may adopt a distance requirement of less than two thousand feet by setting the distance at a point which would basically grandfather all permits issued in violation of an earlier two thousand foot distance, OAG 04-012 (2/03/04).

A Class A county does not have the authority to prohibit the sale of cold beer, iced or mechanically cooled, at convenience stores and grocery stores in the unincorporated areas of the county, OAG 05-024 (3/14/05).

A Class A county does not have the authority to prohibit the sale of cold beer, iced or mechanically cooled, at convenience stores and

grocery stores in the unincorporated areas of the county through a private act passed by the General Assembly, OAG 05-024 (3/14/05).

The 300-foot distance under T.C.A. § 57-5-105(i) should be measured from the nearest portion of the entire building in which sales of beer occur, OAG 05-144 (9/27/05).

Implementation of beer permit distance requirement. OAG 10-98, 2010 Tenn. AG LEXIS 108 (9/15/10).

Prohibiting the sale of beer through drive-up windows. OAG 10-113, 2010 Tenn. AG LEXIS 119 (11/18/10).

Issuance of beer permits near cemeteries. OAG 12-02, 2012 Tenn. AG LEXIS 7 (1/6/12).

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23. Exemptions.

1. Constitutionality.

Acts 1961, ch. 105, amending this section and § 57-5-109 so as to provide for review of refusal of beer license by statutory writ of certiorari with trial de novo was not unconstitutional as requiring courts to exercise administrative function in reviewing action of beer boards. Fentress County Beer Board v. Cravens, 209 Tenn. 679, 356 S.W.2d 260, 1962 Tenn. LEXIS 404 (1962).

Chapter 554, Private Acts of 1935, ratified by the Sullivan County Court in July 1939, prohibiting the sale of beer within 2,000 feet of a church, school, etc., is not unconstitutional as a local law superseding a general state law. Serv-U-Mart, Inc. v. Sullivan County, 527 S.W.2d 121, 1975 Tenn. LEXIS 643 (Tenn. 1975).

T.C.A. § 57-5-105(i) (formerly (f)) does not violate the due process and the equal protection provisions of the state and federal constitutions. Davis v. Blount County Beer Bd., 621 S.W.2d 149, 1981 Tenn. LEXIS 481 (Tenn. 1981).

T.C.A. § 57-5-105(i) (formerly (f)) does not violate the Establishment Clause of the state or federal constitutions. Welch v. Claiborne County Beer Bd., 678 S.W.2d 52, 1984 Tenn. LEXIS 943 (Tenn. 1984), appeal dismissed, 471 U.S. 1010, 105 S. Ct. 2008, 85 L. Ed. 2d 293, 1985 U.S. LEXIS 2552 (1985).

2. Construction.

It is the policy of the courts, generally, to give to statutory provisions regulating the sale of intoxicating liquors a construction liberally in favor of the regulations and the places or institutions for which they are designed to protect and strictly against the applicants for beer or liquor licenses or permits. Y & M v. Beer Com. or Bd., 679 S.W.2d 446, 1984 Tenn. LEXIS 872 (Tenn. 1984).

The supreme court of Tennessee has not construed this section as conferring a veto power upon churches or religious establishments. There are separate statutory provisions containing distance requirements from churches and schools. T.C.A. § 57-5-105(i) (formerly (f)) involves private residences only. Welch v. Claiborne County Beer Bd., 678 S.W.2d 52, 1984 Tenn. LEXIS 943 (Tenn. 1984), appeal dismissed, 471 U.S. 1010, 105 S. Ct. 2008, 85 L. Ed. 2d 293, 1985 U.S. LEXIS 2552 (1985).

3. Authority of County to Regulate Beer.

Since this chapter confers express authority on cities and towns to pass proper ordinances governing the issuance of licenses and also provides express provisions for such cities and towns to impose additional restrictions fixing zones and territories, providing hours of opening and closing and such other regulations as will promote public health, morals and safety in regulation of the alcoholic beverages to which this chapter refers, but only confers on county legislative bodies the authority to regulate the issuance of licenses, the language of the statute must be taken as excluding county legislative bodies from making any regulations beyond the provisions of the statute. Wright v. State, 171 Tenn. 628, 106 S.W.2d 866, 1937 Tenn. LEXIS 145 (1937).

Indictment under this section charging defendant with violation of regulations of the county legislative body with reference to the time of sale of beer and regulation prohibiting sale of beer at a dance hall was improper since under this section the county legislative body only had authority to regulate issuance of li-

censes for sale of such alcoholic beverages and defendant's violation of the above provisions was not within the scope of such authority so as to permit a conviction for such alleged misdemeanor. Wright v. State, 171 Tenn. 628, 106 S.W.2d 866, 1937 Tenn. LEXIS 145 (1937).

The county legislative body had no authority to enact a regulation providing that beer permits should not be issued for a longer period than one year, and a defendant who had been issued a permit without a time limit could not properly be convicted of selling beer without a license where he sold beer more than a year after the issuance of such permit without having it renewed. Huffer v. State, 178 Tenn. 644, 162 S.W.2d 381, 1941 Tenn. LEXIS 91 (1942).

Neither the county legislative body nor county beer committee has authority to promulgate a rule prohibiting the sale of beer by licensed dealers after 7:00 p.m., as power given to incorporated cities and towns to provide hours for opening and closing does not include counties. Perry v. Sevier County Beer Com., 181 Tenn. 696, 184 S.W.2d 32, 1944 Tenn. LEXIS 293 (1944).

Resolution of county legislative body acting as beer board prohibiting sale of beer within 2,000 feet of public gathering place applied to persons holding permits at time of adoption of resolution and the holders of such existing permits had no contractual rights by virtue of such permits which would allow them to continue to sell beer. McClellan v. State, 199 Tenn. 60, 282 S.W.2d 631, 1955 Tenn. LEXIS 428 (1955).

This section relates to counties only. Thompson v. Harriman, 568 S.W.2d 92, 1978 Tenn. LEXIS 607 (Tenn. 1978).

4. —Discretion of County Legislative Body.

Reasonable discretion is given to the county legislative body in the granting of licenses and the regulation to be exercised by the body is in the granting and withdrawal of licenses. State ex rel. Cravens v. Delk, 175 Tenn. 614, 136 S.W.2d 524, 1939 Tenn. LEXIS 81 (1940); Henderson v. Grundy County Beer Committee, 176 Tenn. 397, 141 S.W.2d 901, 1939 Tenn. LEXIS 130 (1940).

5. County Beer Board or Committee.

County legislative body is the exclusive forum for determining validity of election of county beer committee. State ex rel. Thurman v. Scott, 184 Tenn. 76, 195 S.W.2d 617, 1946 Tenn. LEXIS 262 (1946).

Licensee was not entitled to attack legality of appointment of members of county beer board either at hearing before beer board or in review proceeding in circuit court, since county legislative body had exclusive jurisdiction to determine validity of appointment of members of board. Anderson v. Putnam County Beer Board, 184 Tenn. 623, 201 S.W.2d 994, 1947 Tenn. LEXIS 285 (1947).

Where a beer committee is not acting in accordance with the wishes of the county legislative body, the committee may be discharged at once and a new committee substituted. Manuel v. Eckel, 199 Tenn. 234, 285 S.W.2d 360, 1955 Tenn. LEXIS 300 (1955).

Where beer committee acted in proceeding to revoke permit and asserted that they had been recognized by the courts over a period of years and had acted on beer permits, such committee was at least a de facto committee and beyond the collateral attack of third parties. Jones v. Sullivan County Beer Board, 200 Tenn. 301, 292 S.W.2d 185, 1956 Tenn. LEXIS 410 (1956).

The county legislative body is the exclusive forum for presenting the question of the validity of the election of the members of the county beer board or committee and such question cannot be raised before the board or committee. Jones v. Sullivan County Beer Board, 200 Tenn. 301, 292 S.W.2d 185, 1956 Tenn. LEXIS 410 (1956).

6. —Discretionary Powers.

Beer committee did not abuse its discretion in denying applicant a permit to sell beer outside city limits where it appeared that applicant and his wife had a bad reputation in the community and that law enforcement was difficult in the area where permit was sought. State ex rel. Burkhart v. Coldwell, 185 Tenn. 572, 206 S.W.2d 795, 1947 Tenn. LEXIS 358 (1947).

County beer licensing committees have broad discretionary power and their decisions will not be disturbed by the courts unless there is clear abuse of discretion and their action is arbitrary and illegal. State ex rel. Simmons v. Latimer, 186 Tenn. 577, 212 S.W.2d 386, 1948 Tenn. LEXIS 583 (1948).

Where church was established many years after holder of beer permit was granted such permit, action of beer committee in revoking permit solely because permit holder's place of business was within 2,000 feet of church was arbitrary and unreasonable. Sparks v. Beer Committee of Blount County, 207 Tenn. 312, 339 S.W.2d 23, 1960 Tenn. LEXIS 460 (1960).

In denying a permit to sell beer to a grocery store, based upon the feeling that the morals and general welfare of the city would best be served by limiting the number of permits granted, the municipal beer board did not act arbitrarily and discriminatorily. De Caro v. Collierville, 213 Tenn. 254, 373 S.W.2d 466, 1963 Tenn. LEXIS 485 (1963).

This section gives a county discretion to adopt or not adopt the 2,000 foot prohibition, but once the prohibition is adopted it must be uniformly applied and any discretionary application is invalid. Serv-U-Mart, Inc. v. Sullivan County, 527 S.W.2d 121, 1975 Tenn. LEXIS 643

(Tenn. 1975); Rutherford County Beer Board v. Adams, 571 S.W.2d 830, 1978 Tenn. LEXIS 652 (Tenn. 1978).

Where the applicant had complied with all conditions of this section and there was no evidence that the permit would cause congestion of traffic or as to how or why the particular permit requested would interfere with the public health, safety or morals but there were only expressions of fears, speculations and apprehensions, there was no evidence on which to justify rejection of the permit. Harvey v. Rhea County Beer Board, 563 S.W.2d 790, 1978 Tenn. LEXIS 535 (Tenn. 1978).

One matter over which beer boards have no jurisdiction is the question of land use restrictions in the title to an applicant's property. McCarter v. Goddard, 609 S.W.2d 505, 1980 Tenn. LEXIS 515 (Tenn. 1980).

This section gives a county discretion to adopt or not adopt the 2,000 foot prohibition, but once the prohibition is adopted it must be uniformly applied and any discretionary application is invalid. Serv-U-Mart, Inc. v. Sullivan County, 527 S.W.2d 121, 1975 Tenn. LEXIS 643 (Tenn. 1975); Seay v. Knox County Quarterly Court, 541 S.W.2d 946, 1976 Tenn. LEXIS 561 (Tenn. 1976); Rutherford County Beer Board v. Adams, 571 S.W.2d 830, 1978 Tenn. LEXIS 652 (Tenn. 1978).

A showing of sufficient hardship and detrimental reliance may warrant an exception to the 2,000 foot rule. Needham v. Beer Bd. of Blount County, 647 S.W.2d 226, 1983 Tenn. LEXIS 622 (Tenn. 1983).

7. —Prescription of Additional Conditions.

A county beer board must issue a license to anyone who meets the requirements laid out in this section, and they may not prescribe conditions for the issuance of a permit in addition to those set out in the statute. McCarter v. Goddard, 609 S.W.2d 505, 1980 Tenn. LEXIS 515 (Tenn. 1980).

8. —Denial of Beer Permit.

Beer permit may not be denied because of a concentration of beer taverns and package stores in the vicinity. Lones v. Blount County Beer Board, 538 S.W.2d 386, 1976 Tenn. LEXIS 488 (Tenn. 1976).

Beer permit may not be denied because of restrictive covenant in chain of title prohibiting sale of alcoholic beverages on premises. Lones v. Blount County Beer Board, 538 S.W.2d 386, 1976 Tenn. LEXIS 488 (Tenn. 1976).

A bad reputation or occurrence of unlawful activities in and around a building shall not be an impediment to the issuance of a beer permit for those premises unless applicant can be associated with such reputation or activities. Lones v. Blount County Beer Board, 538 S.W.2d 386, 1976 Tenn. LEXIS 488 (Tenn. 1976).

The denial of a beer license may not be based on the philosophy of the county beer board. Coffman v. Hammer, 548 S.W.2d 310, 1977 Tenn. LEXIS 545 (Tenn. 1977).

Where nothing on the record indicated that the sale of beer for off-premises consumption would stand on a different footing from the sale of any other commodity, it was error to deny plaintiff a permit on the grounds that sale of beer by him would adversely affect the public health, safety and morals. Coffman v. Hammer, 548 S.W.2d 310, 1977 Tenn. LEXIS 545 (Tenn. 1977).

A beer permit will not be denied in every instance where children walk on a public sidewalk in close proximity to a proposed outlet for the sale of beer, since there can be a different impact upon public health, safety and morals from the sale of beer at a tavern, at a family-style restaurant, where beer is sold only to complement food, and at the neighborhood grocery store where small children delight to go. Memphis Alcohol Com. v. Randall Memorial Free Will Baptist Church, Inc., 550 S.W.2d 657, 1977 Tenn. LEXIS 539 (Tenn. 1977).

Where appellant had a record of violation of laws pertaining to the sale of beer and the gambling laws and her husband had a serious drinking problem, granting appellant a permit to sell beer at an establishment 35 miles from the nearest police authority would be detrimental to the public health, safety, and morals of those living and working in the community, and this was sufficient to justify the chancellor's denial of the beer permit sought by appellant. Tippit v. Obion County, 651 S.W.2d 211, 1983 Tenn. LEXIS 662 (Tenn. 1983).

9. —Revocation of Permit.

A beer board, after issuing a permit in violation of its own 2,000 foot rule, can revoke the permit on the sole ground that the business establishment is in violation of the 2,000 foot rule. Needham v. Beer Bd. of Blount County, 647 S.W.2d 226, 1983 Tenn. LEXIS 622 (Tenn. 1983).

10. Place of Public Gathering.

A place of public gathering as used in this section giving the county legislative body the discretion of forbidding the storage, sale or manufacture of the alcoholic beverages to which this statute is applicable within 2,000 feet of schools, churches or other places of public gathering did not embrace defendant's store, filling station or dance hall but is confined to public gathering places of a like sort to schools and churches. Wright v. State, 171 Tenn. 628, 106 S.W.2d 866, 1937 Tenn. LEXIS 145 (1937).

Baptismal site on creek on unimproved private property belonging to applicant for beer permit which had only been used with permission of applicant was not a "place of public gathering" within the meaning of this section.

Adams v. Monroe County Quarterly Court, 214 Tenn. 270, 379 S.W.2d 769, 1964 Tenn. LEXIS 474 (1964).

Terms such as "school" and "public meeting place" that have established definitions by a combination of statute and case law must be given uniform application by the cities and counties of this state in exercising the powers granted them by the legislature to regulate the sale of beer. Murfreesboro v. Davis, 569 S.W.2d 805, 1978 Tenn. LEXIS 629 (Tenn. 1978).

City ordinance for regulating the sale of beer that prohibited sale of beer within 300 feet of a hospital, church, school, or other place of public gathering, was found to have been reasonable, and a sports complex that contained a day care center was such a facility. Tenn. Sports Complex v. Lenoir City Beer Bd., 106 S.W.3d 33, 2003 Tenn. App. LEXIS 10 (Tenn. Ct. App. 2003), appeal denied, — S.W.3d —, 2003 Tenn. LEXIS 530 (Tenn. May 27, 2003).

In that a national guard armory was not freely open to the public to use at any time, any public use was subject solely to the guard's approval, it retained the right to refuse to rent for an event, and any public use was "isolated and occasional", the national guard armory was not a place of public gathering. Tenn. Sports Complex v. Lenoir City Beer Bd., 106 S.W.3d 33, 2003 Tenn. App. LEXIS 10 (Tenn. Ct. App. 2003), appeal denied, — S.W.3d —, 2003 Tenn. LEXIS 530 (Tenn. May 27, 2003).

11. Local Distance Rules of 2,000 Feet or Less.

Counties may adopt a rule of 2,000 feet or less as the minimum distance within which a church, school, or place of public gathering can be located from an applicant's place of business. Youngblood v. Rutherford County Beer Bd., 707 S.W.2d 507, 1986 Tenn. LEXIS 667 (Tenn. 1986).

12. Determination of Distance.

In determining the distance between the place of storage, sale or manufacture and the place of public gathering the distance must be measured in a straight line rather than some other method such as by the usually traveled route or by street lines. Jones v. Sullivan County Beer Board, 200 Tenn. 301, 292 S.W.2d 185, 1956 Tenn. LEXIS 410 (1956).

Where a beer permit is sought for a restaurant located on a large lot the measurement begins from the building in which the restaurant is located and not from the property line. Ewin v. Richardson, 217 Tenn. 534, 399 S.W.2d 318, 1966 Tenn. LEXIS 608 (1966).

The distance between a school and the premises involved must be measured in a direct line and not by road, although the latter is the normal method of travel between the two points. Serv-U-Mart, Inc. v. Sullivan County, 527 S.W.2d 121, 1975 Tenn. LEXIS 643 (Tenn. 1975).

The power to specifically provide by statute a method of measurement in enforcing beer permit distance ordinances resides in the legislature, not the cities and counties of this state. Murfreesboro v. Davis, 569 S.W.2d 805, 1978 Tenn. LEXIS 629 (Tenn. 1978).

In determining whether county resolution forbidding the issuance of permits to sell beer within 2,000 feet of any church, school or other place of public gathering had been invalidated by discriminatory and discretionary enforcement, the issue was not whether the present members of the county beer board had discriminatorily and discretionarily applied the 2,000 feet rule but whether the board, as a continuing entity of government, had engaged in such discriminatory and discretionary application. Rutherford County Beer Board v. Adams, 571 S.W.2d 830, 1978 Tenn. LEXIS 652 (Tenn. 1978).

The statute and the ordinance forbidding the location of a beer outlet within 2,000 feet of a church applies when the church in question, although within 2,000 feet of the proposed outlet, is located outside the state of Tennessee. Y & M v. Beer Com. or Bd., 679 S.W.2d 446, 1984 Tenn. LEXIS 872 (Tenn. 1984).

13. —Validity of Distance Ordinance.

Restoration of the validity of a distance ordinance which has been discriminatorily enforced can only be achieved by revocation or other elimination, such as attrition, of the discriminatorily-issued permits and licenses. Murfreesboro v. Davis, 569 S.W.2d 805, 1978 Tenn. LEXIS 629 (Tenn. 1978).

Discriminatory enforcement of a beer permit distance ordinance cannot be rectified by post facto amendments. Murfreesboro v. Davis, 569 S.W.2d 805, 1978 Tenn. LEXIS 629 (Tenn. 1978).

Once discriminatory enforcement of a distance ordinance is established, such ordinance is completely removed as a valid ground for denial of a beer permit. Murfreesboro v. Davis, 569 S.W.2d 805, 1978 Tenn. LEXIS 629 (Tenn. 1978).

This section gives a county discretion to adopt or not adopt the 2,000 foot prohibition, but once the prohibition is adopted it must be uniformly applied and any discretionary application is invalid. Serv-U-Mart, Inc. v. Sullivan County, 527 S.W.2d 121, 1975 Tenn. LEXIS 643 (Tenn. 1975); Seay v. Knox County Quarterly Court, 541 S.W.2d 946, 1976 Tenn. LEXIS 561 (Tenn. 1976); Rutherford County Beer Board v. Adams, 571 S.W.2d 830, 1978 Tenn. LEXIS 652 (Tenn. 1978); Reagor v. Dyer County, 651 S.W.2d 700, 1983 Tenn. LEXIS 660 (Tenn. 1983).

It was evident from the fact that three other establishments retained their license in violation of the rule that there had been "discretionary application" in its enforcement. Seay v.

Knox County Quarterly Court, 541 S.W.2d 946, 1976 Tenn. LEXIS 561 (Tenn. 1976).

The effect of discriminatory application of the 2,000 foot rule is to completely remove, as a valid ground for denial of a beer permit, proximity, measured in feet, to a school, church or other place of public gathering. Seay v. Knox County Quarterly Court, 541 S.W.2d 946, 1976 Tenn. LEXIS 561 (Tenn. 1976).

County resolution forbidding issuance of beer license to an establishment within 300 feet of a residential dwelling where the owner of the residence objects and, T.C.A. § 57-5-105(i) (formerly (f)), from which the ordinance derived its authority, were valid enactments and not unlawful delegations of legislative power to private individuals. Davis v. Blount County Beer Bd., 621 S.W.2d 149, 1981 Tenn. LEXIS 481 (Tenn. 1981).

Where four establishments were previously granted permits by previous board in violation of county 2,000 feet rule and there had been no revocation or other elimination to save the rule, such rule was void and of no effect, and plaintiff would be granted a permit to sell beer. Reagor v. Dyer County, 651 S.W.2d 700, 1983 Tenn. LEXIS 660 (Tenn. 1983).

14. Application for Permit.

Where petition for certiorari from beer board alleged that the petition for a beer license and the evidence showed compliance with this section in that the beer was not to be sold at any places prohibited by this section, but nowhere in the petition or in the evidence was it shown where the beer would be sold, the petition for certiorari was properly refused. Crowley v. De Kalb County Beer Board, 206 Tenn. 547, 334 S.W.2d 949, 1960 Tenn. LEXIS 392 (1960).

An applicant seeking a license or permit to sell beer in a county is required to establish by proof that his application complies with certain conditions and provisions set out in this section which leaves the judgment to be made on the issue of whether or not an applicant has under the proof met all of such conditions and provisions. Cantrell v. De Kalb County Beer Board, 213 Tenn. 568, 376 S.W.2d 480, 1964 Tenn. LEXIS 423 (1964).

15. Hearing on Permit.

Obligation to see that application for permit or other papers which were before beer board were sent up to superior court was upon person who filed petition for certiorari. Hughes v. Little, 213 Tenn. 574, 376 S.W.2d 482, 1964 Tenn. LEXIS 424 (1964).

Evidence in general of the evils of beer is not sufficient to show that the granting of a particular beer permit will interfere with the public health, safety and morals. Ewin v. Richardson, 217 Tenn. 534, 399 S.W.2d 318, 1966 Tenn. LEXIS 608 (1966).

16. Review and Appeal.

Motion for new trial is not a prerequisite to appeal to supreme court from trial court's review of action of beer committee on granting or revocation of beer permit. Chadwick v. Beer Committee of Anderson County, 213 Tenn. 592, 376 S.W.2d 490, 1964 Tenn. LEXIS 426 (1964).

Supreme court considers an appeal from the action of the trial court in denying or granting a permit de novo accompanied by a presumption of the correctness of the judgment so that such judgment may be overturned by a preponderance of the evidence. Adams v. Monroe County Quarterly Court, 214 Tenn. 270, 379 S.W.2d 769, 1964 Tenn. LEXIS 474 (1964).

Under the 1961 amendment to this section a person aggrieved by the action of a beer board has the sole remedy of having the same reviewed in either the circuit or chancery court by statutory writ of certiorari with trial de novo as a substitute for appeal with the cause being tried as if it had originated in such court; and the trial judge is required to make an independent judgment of the merits substituting his judgment for that of the beer board. Cantrell v. De Kalb County Beer Board, 213 Tenn. 568, 376 S.W.2d 480, 1964 Tenn. LEXIS 423 (1964); Hughes v. Little, 213 Tenn. 574, 376 S.W.2d 482, 1964 Tenn. LEXIS 424 (1964); Chadwick v. Beer Committee of Anderson County, 213 Tenn. 592, 376 S.W.2d 490, 1964 Tenn. LEXIS 426 (1964).

Where, upon hearing de novo, chancellor reversed action of beer board and held that petitioner was entitled to beer permit, case came to supreme court with presumption of correctness of judgment of trial court and burden was on beer board to show that evidence preponderated against such judgment. Moore v. Marshall County Beer Board, 214 Tenn. 668, 383 S.W.2d 14, 1964 Tenn. LEXIS 520 (1964).

The decree of a trial court granting or denying a beer permit creates a presumption of correctness and the burden is on the appellant to show that the evidence preponderates against the judgment of the trial court. Gibson v. Ferguson, 562 S.W.2d 188, 1976 Tenn. LEXIS 508 (Tenn. 1976); Rutherford County Beer Board v. Adams, 571 S.W.2d 830, 1978 Tenn. LEXIS 652 (Tenn. 1978).

Under this section and § 57-5-109 the decree of a trial court granting or denying a beer permit comes to the appellate court accompanied by a presumption of correctness and the burden is upon the appellant to show that the evidence preponderates against the judgment of the trial court. Hinkle v. Montgomery, 596 S.W.2d 800, 1980 Tenn. LEXIS 439 (Tenn. 1980).

Residents' testimony concerning sale of beer from a particular establishment and applicant's business practices preponderated against trial court's reversal of city's alcohol commission's denial of a beer permit under T.C.A. § 57-5-105(b)(1); there was evidence linking the sale of beer at the market to a pattern of littering and unlawful conduct. Su-

leiman v. City of Memphis Alcohol Comm'n, 290 S.W.3d 844, 2008 Tenn. App. LEXIS 417 (Tenn. Ct. App. July 24, 2008).

17. Indictment for Unlawful Sale.

Where effect of indictment upon reading both of its counts together was to charge that on a certain date defendant through those working for him sold beer without a license in violation of this section, such indictment was sufficient. State v. Youngblood, 199 Tenn. 519, 287 S.W.2d 89, 1956 Tenn. LEXIS 348 (1956).

18. Transfer of Permit.

Under Tennessee law a beer permit may be transferred from one location to another upon proper application to the quarterly court (now the court of general sessions) or its beer committee and a showing of full compliance with the statute. Howard v. Willocks, 525 S.W.2d 132, 1975 Tenn. LEXIS 652 (Tenn. 1975); Midgett v. Smith, 591 S.W.2d 765, 1979 Tenn. LEXIS 530 (Tenn. 1979).

19. Prospective Application of County Regulation.

The language of this statute which provides that a county resolution forbidding the sale of beer within 300 feet of a residence if such residence owner enters an objection shall not apply to a location where beer permits have been issued prior to the adoption of the resolution, and also prohibits the application of the resolution to petitions for amendments to such existing beer permits. Claiborne County Beer Board v. Poore, 556 S.W.2d 87, 1977 Tenn. LEXIS 611 (Tenn. 1977).

Where storeowner had been granted a beer permit prior to the adoption by the county of a resolution pursuant to this section forbidding the sale of beer within 300 feet of a residence if such residence owner entered an objection, such resolution could not be applied to storeowner's subsequent application for an amendment to that beer permit. Claiborne County Beer Board v. Poore, 556 S.W.2d 87, 1977 Tenn. LEXIS 611 (Tenn. 1977).

Rule promulgated a year after plaintiff filed his application for a beer license but before the beer board denied plaintiff's application could be used as basis to deny plaintiff's application. Coffman v. Washington County Beer Bd., 615 S.W.2d 675, 1981 Tenn. LEXIS 440 (Tenn. 1981).

20. Moral Turpitude.

Neither rolling dice for a soft drink nor failure to release caught fish were crimes involving moral turpitude. Gibson v. Ferguson, 562 S.W.2d 188, 1976 Tenn. LEXIS 508 (Tenn. 1976).

21. Construction with § 57-5-108.

The 1961 amendment, providing judicial review for a refusal of a beer license, did not implicitly repeal T.C.A. § 57-5-108, which provides that municipalities may enact ordinances governing the issuance and revocation of beer licenses. De Caro v. Collierville, 213 Tenn. 254, 373 S.W.2d 466, 1963 Tenn. LEXIS 485 (1963).

22. Traffic Congestion.

In order for traffic congestion to constitute a valid basis for denying a permit to sell beer in the package it must be shown that the issuance of a permit would cause traffic to be more congested and more hazardous than it was prior to the issuance of the permit, a fact most difficult to establish with respect to a location at which beer has not been sold previously. Hinkle v. Montgomery, 596 S.W.2d 800, 1980 Tenn. LEXIS 439 (Tenn. 1980).

23. Exemptions.

Beer board's decision to effectively exempt a license applicant from the enforcement of a valid distance from public gathering place rule, providing a permit for the sale of alcohol for off-premises consumption in violation of the county's distance rule as the result of an agreed order in a contested civil case, invalidated the rule as a basis for the denial of future permits, and there was no exception for the discriminatory application of the distance rule simply because it occurred pursuant to an agreed order entered into in good faith. The library with its public meeting room within 200 feet of the places where the applicants sought licenses was a public gathering place. Boyd's Creek Enters., LLC v. Sevier County, 362 S.W.3d 600, 2010 Tenn. App. LEXIS 721 (Tenn. Ct. App. Nov. 18, 2010), appeal denied, — S.W.3d —, 2011 Tenn. LEXIS 510 (Tenn. May 25, 2011).

57-5-106. Licensing powers of cities, towns, and Class B counties.

(a) All incorporated cities, towns and Class B counties in this state are authorized to pass proper ordinances governing the issuance and revocation or suspension of licenses for the storage, sale, manufacture and/or distribution of beer within the corporate limits of the cities and towns and within the general services districts of Class B counties outside the limits of any smaller cities as defined in § 7-1-101 and to provide a board of persons before whom such application shall be made, but the power of such cities, towns and Class B counties to issue licenses shall in no event be greater than the power herein

granted to counties, but cities, towns and Class B counties may impose additional restrictions, fixing zones and territories and provide hours of opening and closing and such other rules and regulations as will promote public health, morals and safety as they may by ordinance provide. The ordinance power granted to a municipality by this subsection (a) does not permit a municipality to establish residency requirements for its applicants. The ordinance power granted to a municipality by this section does not permit a municipality to impose training or certification restrictions or requirements on employees of a permittee if those employees possess a server permit issued by the alcoholic beverage commission pursuant to chapter 3, part 7 of this title.

(b) Cities, towns and Class B counties may authorize the sale of beer in the rooms of regularly conducted hotels and motels and in regularly incorporated clubs and lodges.

(c)(1) Notwithstanding subsection (a), any county that is the owner of property used as a park that is within the corporate boundaries of a municipality within that county has the exclusive authority to issue, revoke, and suspend licenses for the storage, sale, manufacture, and distribution of beer within the boundaries of the park consistent with the county rules governing the issuance, revocation, and suspension of licenses for other locations in the county, except there is no restriction of distance from residences or churches, schools, or other public gathering places.

(2) This subsection (c) applies only in counties with a population of not less than one hundred seventy-two thousand three hundred (172,300) nor more than one hundred seventy-two thousand four hundred (172,400), according to the 2010 federal census or any subsequent federal census.

History.

Acts 1933, ch. 69, § 10; C. Supp. 1950, § 1191.14; Acts 1965, ch. 321, § 3; T.C.A. (orig. ed), § 57-208; Acts 1981, ch. 377, § 1; 1983, ch. 386, § 6; 1993, ch. 297, § 7; 1993, ch. 451, § 3; T.C.A., § 57-5-108; Acts 1995, ch. 396, § 8; 2018, ch. 944, § 1.

Compiler's Notes.

Former § 57-5-106, concerning bond requirements for alcoholic beverages warehousemen, dealers and manufacturers, was transferred to § 57-5-110 in 1993.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Amendments.

The 2018 amendment added (c).

Effective Dates.

Acts 2018, ch. 944, § 4. May 15, 2018.

Cross-References.

Prohibited acts, title 57, ch. 5, part 3.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 4, 5, 9.

Law Reviews.

Administrative Law — 1964 Tennessee Survey (E. Blythe Stason), 18 Vand. L. Rev. 1047.

Attorney General Opinions.

Constitutionality of Dyersburg City ordinance pertaining to beer, OAG 94-120 (10/10/94).

Municipal beer ordinances, OAG 96-020 (2/16/96).

Authority of board, committee, or individual members to revoke beer permits, OAG 97-060 (5/1/97).

A city controls the traffic of beer within its corporate limits by virtue of its permit-issuing power and the ordinances it passes to delineate and enforce this power; a referendum is not necessary to approve beer sales in an incorporated city and the legislature has not given cities the right to conduct such a referendum, OAG 02-092 (8/28/02).

Prohibiting the sale of beer through drive-up windows. OAG 10-113, 2010 Tenn. AG LEXIS 119 (11/18/10).

NOTES TO DECISIONS

Analysis

1. Powers of Municipalities.
2. Beer Boards or Committees.
3. Municipal Ordinances.
4. Partially Invalid Ordinance.
5. Regulations of Beer Board or Committee.
6. Mandatory Nature of Section.
7. Construction with § 57-5-105.
8. Clubs.

1. Powers of Municipalities.

This section concedes to municipalities very wide discretionary powers in matters relating to the sale of intoxicating beverages, including zoning and restriction of areas, hours of opening and closing and similar matters. Howard v. Christmas, 180 Tenn. 519, 176 S.W.2d 821, 1944 Tenn. LEXIS 317 (1944).

The granting of the privilege of selling intoxicating beverages, including beer, in municipalities by state statutes does not preclude municipalities from enacting all reasonable measures deemed desirable for the protection of the morals of its community, even to the extent of prohibition. Howard v. Christmas, 180 Tenn. 519, 176 S.W.2d 821, 1944 Tenn. LEXIS 317 (1944); Gatlinburg Beer Regulation Committee v. Ogle, 185 Tenn. 482, 206 S.W.2d 891, 1947 Tenn. LEXIS 363 (1947); Ketner v. Clabo, 189 Tenn. 260, 225 S.W.2d 54, 1949 Tenn. LEXIS 423 (1949).

In all its pronouncements on this chapter the supreme court has recognized that municipalities have very broad powers in the regulation of the sale of beer. Gatlinburg Beer Regulation Committee v. Ogle, 185 Tenn. 482, 206 S.W.2d 891, 1947 Tenn. LEXIS 363 (1947); McHugh v. Morristown, 186 Tenn. 175, 208 S.W.2d 1021, 1948 Tenn. LEXIS 533 (1948).

Municipality is not required to issue a beer permit. Ketner v. Clabo, 189 Tenn. 260, 225 S.W.2d 54, 1949 Tenn. LEXIS 423 (1949).

Amendment to § 57-5-105, giving courts the right to review a municipality's refusal of a permit to sell beer through the statutory writ of certiorari, with trial de novo, does not make it mandatory upon a municipality to grant more permits than the city deems advisable. De Caro v. Collierville, 213 Tenn. 254, 373 S.W.2d 466, 1963 Tenn. LEXIS 485 (1963).

Under the authority given a municipality by this section, the appropriate board may prescribe such rules and regulations as they think advisable; and the only limitations on the power given is that the board must exercise such power in good faith, not in a discriminatory and arbitrary manner. De Caro v. Collierville, 213 Tenn. 254, 373 S.W.2d 466, 1963 Tenn. LEXIS 485 (1963); Case v. Carney, 213 Tenn. 597, 376 S.W.2d 492, 1964 Tenn. LEXIS 427 (1964).

Under this section regulation and control of sale of beer is made a subject of the police power and absolute discretion is given governing body of municipality to effect such regulation and control. Barnes v. Dayton, 216 Tenn. 400, 392 S.W.2d 813, 1965 Tenn. LEXIS 585 (1965).

Municipalities are given absolute discretion in the matter of the regulation and control of beer and thus have the authority to revoke a beer license for sale to minors. Richards v. Lewisburg Alcoholic Beverage Com., 543 S.W.2d 852, 1977 Tenn. LEXIS 520 (Tenn. 1977).

The city had the right to prohibit the sale of beer near a school or church. Memphis Alcohol Com. v. Randall Memorial Free Will Baptist Church, Inc., 550 S.W.2d 657, 1977 Tenn. LEXIS 539 (Tenn. 1977).

Municipalities were not affected by the 1961 amendment to §§ 57-5-105 and 57-5-109 (now § 57-5-108) and thus have the continuing right under this section to regulate the sale of beer to the point of prohibition. Thompson v. Harriman, 568 S.W.2d 92, 1978 Tenn. LEXIS 607 (Tenn. 1978).

Terms such as "school" and "public meeting place" that have established definitions by a combination of statute and case law must be given uniform application by the cities and counties of this state in exercising the powers granted them by the legislature to regulate the sale of beer. Murfreesboro v. Davis, 569 S.W.2d 805, 1978 Tenn. LEXIS 629 (Tenn. 1978).

The power to specifically provide by statute a method of measurement in enforcing beer permit distance ordinances resides in the legislature, not the cities and counties of this state. Murfreesboro v. Davis, 569 S.W.2d 805, 1978 Tenn. LEXIS 629 (Tenn. 1978).

A city does not have more power than a county to issue licenses, but has more power to place restrictions upon the issuance of licenses. Watkins v. Naifeh, 635 S.W.2d 104, 1982 Tenn. LEXIS 416 (Tenn. 1982).

This enabling statute has been given the broadest possible construction; nevertheless, the broad grant of power to the city fathers to regulate the sale of beer may not be exercised in a discriminatory or arbitrary manner. Pantry, Inc. v. Pigeon Forge, 681 S.W.2d 23, 1984 Tenn. LEXIS 879 (Tenn. 1984); Fritts v. Wallace, 723 S.W.2d 948, 1987 Tenn. LEXIS 816 (Tenn. 1987).

Municipalities have extensive authority to regulate the sale of beer within their boundaries and this includes the authority to limit the number and location of retail outlets, both for on-premises and off-premises consumption. State ex rel. Amvets Post 27 v. Beer Bd. of Jellico, 717 S.W.2d 878, 1986 Tenn. LEXIS 794 (Tenn. 1986).

The state has the power to prohibit certain acts involving exposure of parts of the body and to restrict the area where performers may perform in establishments holding a beer license, under U.S. const., amend. 21, and under New York State Liquor Auth. v. Bellanca, 452 U.S. 714, 101 S. Ct. 2599, 69 L. Ed. 2d 357, 1981 U.S. LEXIS 119 (1981). PP & C, Inc. v. Metropolitan Beer Permit Bd., 833 S.W.2d 90, 1992 Tenn. App. LEXIS 91 (Tenn. Ct. App. 1992).

A metropolitan government need only have a rational basis for its decision to prohibit certain acts in establishments selling beer when the same prohibition does not extend to all public places. PP & C, Inc. v. Metropolitan Beer Permit Bd., 833 S.W.2d 90, 1992 Tenn. App. LEXIS 91 (Tenn. Ct. App. 1992).

2. Beer Boards or Committees.

A beer regulation committee created by town ordinance has the power and right to make reasonable regulations for those to follow who desire a permit to sell beer. Gatlinburg Beer Regulation Committee v. Ogle, 185 Tenn. 482, 206 S.W.2d 891, 1947 Tenn. LEXIS 363 (1947).

In denying a permit to sell beer to a grocery store, based upon the feeling that the morals and general welfare of the city would best be served by limiting the number of permits granted, the municipal beer board did not act arbitrarily and discriminatorily. De Caro v. Collierville, 213 Tenn. 254, 373 S.W.2d 466, 1963 Tenn. LEXIS 485 (1963).

3. Municipal Ordinances.

Under this statute a zoning ordinance by the city of Maryville which omitted the location of complainant's business from named streets where beer might be sold was not an unreasonable abridgement of complainant's property rights or an unreasonable discrimination against him but was within the provisions of the statute. Madison v. Maryville, 173 Tenn. 489, 121 S.W.2d 540, 1938 Tenn. LEXIS 32 (1938).

Under the statute a municipality could properly pass an ordinance making it unlawful to store, wholesale or retail beer within 2,000 feet of any school, church or lodge building, and persons holding licenses who were thereby affected had no vested or property rights under which they would be entitled to enjoin the enforcement of the ordinance. Cravens v. Storie, 175 Tenn. 285, 133 S.W.2d 609, 1939 Tenn. LEXIS 39 (1939).

A city ordinance which prohibited sale of beer was not contrary to the provisions of this chapter regulating beer where city by its charter was authorized to prohibit sale of beer and this chapter authorized municipalities to regulate sale of beer. Grubb v. Morristown, 185 Tenn. 114, 203 S.W.2d 593, 1947 Tenn. LEXIS 310 (1947).

City ordinance prohibiting sale of beer was not discriminatory and did not violate any civil right. Grubb v. Morristown, 185 Tenn. 114, 203 S.W.2d 593, 1947 Tenn. LEXIS 310 (1947).

A proposed ordinance prohibiting storage and possession of beer was valid under the general police power of the city as it promoted "public health, morals and safety" of the city. McHugh v. Morristown, 186 Tenn. 175, 208 S.W.2d 1021, 1948 Tenn. LEXIS 533 (1948).

Town ordinance forbidding sale of beer at any point within 5,000 feet of church or school did not suspend the general law on the ground that less beer would be sold and less revenue earned, since statute authorizing sale of beer is both a revenue and police measure, and, furthermore, ordinance in question was pursuant to general law, as this section authorizes county legislature bodies to forbid sale of beer at any point closer than 2,000 feet to a church or school. Rule v. Etowah, 195 Tenn. 634, 263 S.W.2d 498, 1953 Tenn. LEXIS 388 (1953).

Ordinance prohibiting sale of beer without permit, making sale for on-premises consumption illegal, prohibiting issuance of permit where beer board was of opinion that beer business would cause traffic congestion or otherwise be hazardous to public health, morals or welfare, limiting package store permits to two, prohibiting sale within certain area of city and regulating hours of sale was constitutional. Barnes v. Dayton, 216 Tenn. 400, 392 S.W.2d 813, 1965 Tenn. LEXIS 585 (1965).

Although this section vested city with broad authority to limit the number of beer permits, that authority could be exercised only through the enactment of proper ordinances so providing, and absent such ordinance the denial of an application for a beer permit was arbitrary and capricious. Brooks v. Garner, 566 S.W.2d 531, 1978 Tenn. LEXIS 554 (Tenn. 1978).

Discriminatory enforcement of a beer permit distance ordinance cannot be rectified by post facto amendments. Murfreesboro v. Davis, 569 S.W.2d 805, 1978 Tenn. LEXIS 629 (Tenn. 1978).

Once discriminatory enforcement of a distance ordinance is established, such ordinance is completely removed as a valid ground for denial of a beer permit. Murfreesboro v. Davis, 569 S.W.2d 805, 1978 Tenn. LEXIS 629 (Tenn. 1978).

Restoration of the validity of a distance ordinance which has been discriminatorily enforced can only be achieved by revocation or other elimination, such as attrition, of the discriminatorily-issued permits and licenses. Murfreesboro v. Davis, 569 S.W.2d 805, 1978 Tenn. LEXIS 629 (Tenn. 1978).

4. Partially Invalid Ordinance.

City ordinance cannot prohibit possession of beer but where it was included in ordinance prohibiting sale of beer the possession part would be elided and the ordinance held valid. Helms v. Richardson, 191 Tenn. 280, 231 S.W.2d 1019, 1950 Tenn. LEXIS 553 (1950).

5. Regulations of Beer Board or Committee.

A regulation of a beer committee requiring that an application for a permit to retail beer must be accompanied by an agreement for such sale signed by two thirds of the property owners within a radius of 300 feet of the place of the proposed business is a valid regulation. Gatlinburg Beer Regulation Committee v. Ogle, 185 Tenn. 482, 206 S.W.2d 891, 1947 Tenn. LEXIS 363 (1947).

Finding of chancellor of "adequacy of the premises" did not constitute a finding that the issuance of a license would not "interfere with the public health, safety and morals." Case v. Carney, 213 Tenn. 597, 376 S.W.2d 492, 1964 Tenn. LEXIS 427 (1964).

Where, upon review of action of city beer permit board under the provisions of § 57-5-109 (now § 57-5-108) providing for statutory certiorari, chancellor did not weigh the evidence but merely found that the board did not act "illegally, capriciously or unreasonably" in refusing permit, the case was reversed and remanded for a trial de novo of the issues had upon such proof as the parties might desire to introduce pursuant to the provisions of § 27-9-111. Case v. Carney, 213 Tenn. 597, 376 S.W.2d 492, 1964 Tenn. LEXIS 427 (1964).

6. Mandatory Nature of Section.

Statutes prescribing how delegated police power may be exercised by municipalities are mandatory and exclusive. Brooks v. Garner, 566 S.W.2d 531, 1978 Tenn. LEXIS 554 (Tenn. 1978).

7. Construction with § 57-5-105.

This section was not implicitly repealed by the 1961 amendment to § 57-5-105 that provided for judicial review of beer license denials. De Caro v. Collierville, 213 Tenn. 254, 373 S.W.2d 466, 1963 Tenn. LEXIS 485 (1963); Case v. Carney, 213 Tenn. 597, 376 S.W.2d 492, 1964 Tenn. LEXIS 427 (1964).

8. Clubs.

A club which has a license for on-premises consumption of alcoholic beverages and beer from the state does not have an absolute right to a beer permit from a city beer board. State ex rel. Amvets Post 27 v. Beer Bd. of Jellico, 717 S.W.2d 878, 1986 Tenn. LEXIS 794 (Tenn. 1986).

57-5-107. Hotels and motels.

(a) Any hotel or motel licensed under this chapter and under chapter 4 of this title may dispense beer to adult guests through locked, in-room units.

(b) No person under the age of twenty-one (21) shall be issued or supplied with a key by any hotel or motel for such units. Such units may only be located in any such hotel or motel located in municipalities having a population in excess of one hundred thousand (100,000) if the voters of such municipality have approved the consumption of alcoholic beverages on the premises by referendum and in any county in which such municipalities are located if the voters of such county have approved the consumption of alcoholic beverages on the premises by referendum.

History.

Acts 1989, ch. 145, § 2; 1993, ch. 297, § 10; T.C.A., § 57-5-111.

Compiler's Notes.

Former § 57-5-107 (Acts 1933, ch. 69, § 10; 1933, ch. 133, § 1; C. Supp. 1950, § 1191.14; T.C.A. (orig. ed.), § 57-207), concerning bonds of retailers, was repealed by Acts 1986, ch. 676, § 1.

Acts 1989, ch. 145, § 3 provided that the alcoholic beverage commission is authorized to promulgate any rules which may be necessary to implement the provisions of this section.

For tables of populations of Tennessee municipalities, see Volume 13 and its supplement.

Cross-References.

Premises on which certain sales and consumption authorized, § 57-4-101.

57-5-108. Revocation or suspension of permits or licenses — Civil penalty — Review of orders — Pilot project concerning local and municipal beer boards.

(a)(1)(A) Permits or licenses issued under this chapter by any county legislative body or any committee or board created by any county legislative body may be revoked or suspended in accordance with this section by

the county legislative body, committee or board which issued the permit or license.

(B) Permits or licenses issued under this chapter by any board or commission created by the metropolitan council of any Class B county may be revoked or suspended in accordance with this section by such board or commission.

(C) Permits or licenses issued under this chapter by the governmental body of any incorporated city, or by any committee or board created by such governmental body may be revoked or suspended in accordance with this section by the governmental body, committee or board which issued the permit or license.

(2)(A) A city, Class A county, or Class B county, or any committee, board, or commission created by these governmental bodies, shall not, pursuant to § 57-5-608, revoke or suspend the permit of a responsible vendor for a clerk's illegal sale of beer to a minor, if the permit or license holder and the clerk making the sale have complied with the requirements of § 57-5-606 as a responsible vendor under this part, but may impose on the responsible vendor a civil penalty not to exceed one thousand dollars ($1,000) for each offense of making or permitting to be made any sales to minors or for any other offense.

(B) The prohibition of subdivision (a)(2)(A) concerning the revocation or suspension of the vendor's permit shall not apply to any vendor who is not a responsible vendor under this part, or to a participating vendor, if the vendor or clerk making a sale to a minor fails to comply with the requirements of § 57-5-606. With respect to such permit or license holder, the committee, board, or commission may, at the time it imposes a revocation or suspension, offer the permit or license holder the alternative of paying a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars ($1,000) for any other offense.

(C) Permanent revocation of beer permits may only be applied when the permit holder has at least two (2) violations within a twelve-month period.

(D) Revocation of beer permits applies only to that permit holder, or agents of the permit holder, at that location. Revocation of beer permits shall not stay with the property if the property changes hands, nor may a city, Class A county or Class B county, or any committee, board or commission created by these governmental bodies, apply penalties, suspensions or revocations to other beer permits held by the permittee at other locations.

(E) Revocation of a beer permit at one (1) location should not be the sole disqualifying factor when considering the issuance of beer permits at other locations.

(F) If, at any location that has been affected by permanent beer permit revocation, the property changes hands and no longer belongs to the permit holder, or agents of the permit holder, the new property owner may apply to the beer board for release of revocation.

(G) If a civil penalty is offered as an alternative to revocation or suspension, where allowed under subdivision (a)(2)(B), the holder shall

have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn. The holder's payment of a civil penalty shall not affect the holder's ability to seek review of the civil penalty pursuant to subsection (d).

(3) A city or county may at any time accept the payment of a civil penalty, not to exceed the amounts set forth in subdivision (a)(2)(B), by a permit or license holder charged with a violation of this chapter, which payment shall be an admission by the holder of the violation so charged and shall be paid to the exclusion of any other penalty that the city or county may impose.

(b) No permit or license shall be revoked on the grounds the operator or any person working for the operator sells beer to a minor over the age of eighteen (18) years if such minor exhibits an identification, false or otherwise, indicating the minor's age to be twenty-one (21) or over, if the minor's appearance as to maturity is such that the minor might reasonably be presumed to be of such age and is unknown to such person making the sale. The license or permit may be suspended for a period not to exceed ten (10) days or a civil penalty up to one thousand five hundred dollars ($1,500) may be imposed pursuant to subdivision (a)(3). However, this shall not be construed in any way to relieve the minor from liability for making such illegal purchase as provided in § 57-5-301.

(c) Such revocation, suspension, or imposition of civil penalty may be made for any violation of any provision of this chapter or whenever it shall satisfactorily appear that the premises of any person, firm or corporation holding a permit or license under this chapter are being maintained and operated in such manner as to be detrimental to public health, safety or morals. The board in considering the suspension or revocation of a license shall consider repeated violations of any local ordinance or state law involving prohibited sexual contact on the premises of an adult oriented establishment.

(d) The action of such agency in connection with the issuance of any order of any kind, including the revocation or suspension of a license or permit, imposition of a civil penalty or the refusal to grant a license or permit under §§ 57-5-105, 57-5-106 and this section, may be reviewed by statutory writ of certiorari, with a trial de novo as a substitute for an appeal, the petition of certiorari to be addressed to the circuit or chancery court of the county in which any such order was issued.

(e) Immediately upon the grant of the writ of certiorari, the agency revoking or suspending a license or permit or imposing a civil penalty shall cause to be made, certified and forwarded to the court a complete transcript of the proceedings in the cause.

(f) This section shall be the sole remedy and exclusive method of review of any action or order that may have been issued by any county legislative body, or any committee appointed by any county legislative body, or from any board or commission authorized under §§ 57-5-105 and 57-5-106, including the refusal or failure to grant any license or permit or the imposition of a civil penalty. The Tennessee Rules of Civil Procedure shall be applicable in connection with such review. Any party dissatisfied with the decree of the court may, upon giving bond as required in other cases, appeal, where the cause shall be heard upon the transcript of the records from the circuit court.

(g) A judge of any court of record shall have the authority to supersede, stay or enjoin any order of an agency revoking, suspending or imposing a civil penalty made under the authority of this chapter for good cause shown on part of the petitioning party thereof. No circuit or chancery judge shall have the authority to grant any such extraordinary writ except the judge of a court of record to which the petition for certiorari is addressed.

(h) If a final judgment is entered by the trial court superseding the revocation or suspension order or order imposing a civil penalty, and the cause is appealed by the agency, the final judgment of the trial court shall remain in force until final appellate disposition of the cause.

(i) In instances involving only wholesale beer permits or licenses, or certificates of registration, the order of the agency suspending, revoking or failing to renew such wholesale beer permits or licenses or certificates of registration or imposing civil penalties shall as a matter of law be stayed or superseded, and the order will not be effective until final judicial review, including all available appeals, of the matter. In instances where no appeal is taken or perfected by the wholesaler within the required time as prescribed by law, the order of the agency shall become effective.

(j) The remedy provided by this section shall be the only method of reviewing orders of county legislative bodies, governing bodies or municipal corporations, boards or committees revoking or suspending licenses issued under this chapter or imposing civil penalties.

(k) Where a permit or license is revoked, no new license or permit shall be issued to permit the sale of beer on the same premises until after the expiration of one (1) year from the date the revocation becomes final and effective. The board, in its discretion, may determine that issuance of a license or permit before the expiration of one (1) year from the date of revocation becomes final is appropriate, if the individual applying for such issuance is not the original holder of the license or any family member who could inherit from such individual under the statute of intestate succession.

(*l*) Powers to suspend, revoke, or impose civil penalties conferred in this section upon county legislative bodies and governmental bodies of incorporated cities and any committees, commissions, or boards created by such bodies and/or governmental bodies are likewise conferred upon the commissioner of revenue as they may relate to certificates of registration and transportation permits issued by the commissioner under this chapter to any licensed brewer, wholesaler or distributor for the failure of any such person to file with the commissioner any report required by this chapter, or for the filing of a false report, or the failure to pay tax due by any such licensee under this chapter and rules and regulations promulgated pursuant thereto, or for the receipt, possession, storage or transportation of beer in violation of this chapter, or any rule and regulation promulgated by the commissioner thereunder, and for no other reason. The remedy provided by this section shall likewise be the only method of reviewing orders of the commissioner revoking or suspending certificates of registration and transportation permits issued under this chapter or imposing civil penalties.

(m) Any county, municipal or metropolitan beer board or committee may, at its discretion, revoke or suspend the permit of or impose a civil penalty

pursuant to subdivision (a)(3) on any beer retailer within its jurisdiction who is found to possess beer on which the state beer barrelage tax, imposed by § 57-5-201, and the city and county wholesale beer tax, imposed by § 57-6-103, has not been paid. The burden of proof shall be upon the retail beer permit holder to show that the two (2) taxes on the beer in the permit holder's possession have been paid by showing that the beer was purchased from a Tennessee beer wholesaler, which fact shall be shown by the retailer providing a bill of sale or invoice for the beer which shall include the name and address of the wholesaler, the name and address of the retailer, the number of containers of each brand of beer purchased by the retailer, and which shall be signed by the retailer.

(n)(1)(A) As a pilot project to terminate July 1, 2014, unless extended by the general assembly, when a local or municipal beer board responsible for controlling the sale of beer or malt beverages within any county included within subsection (p), finds violations, as defined in this chapter, in the sale of beer or malt beverages consumed on-premises of an establishment located within the local or municipal beer board's jurisdiction that result in the beer board suspending the operation of or revoking the permit of the establishment where the violation occurred, the beer board is authorized to notify the executive director of the alcoholic beverage commission by certified mail, return receipt requested, of the action taken by the beer board. Such notice shall include the record of evidence and the determination made by the beer board in suspending or revoking the permit.

(B) Upon receipt of such notice, the executive director of the alcoholic beverage commission shall take the actions required pursuant to § 57-4-202(b) with respect to violations as defined in chapter 4 of this title related to the license for the sale of alcoholic beverages for consumption on the premises at the location where the violation of this chapter occurred.

(2) The suspension or revocation decision of the beer board made pursuant to subdivision (n)(1)(A) is final, and any party aggrieved thereby may appeal the decision of the beer board in accordance with the appeal procedures of this chapter.

(o)(1) As a pilot project to terminate July 1, 2014, unless extended by the general assembly, if, pursuant to § 57-4-202(c), the alcoholic beverage commission sends a certified letter, return receipt requested to the local or municipal beer board responsible for controlling the sale of beer or malt beverages within any county included within subsection (p), providing notice that the commission has suspended or revoked the license of an establishment for a violation of chapter 4 of this title, upon receipt of the certified letter, the beer board shall:

(A) Schedule a hearing for the next regularly scheduled meeting of the beer board to be held at least fourteen (14) days following the date the beer board receives the certified letter to provide an opportunity for the permit holder to appear and show cause why the permit to sell beer on the premises should not be suspended or revoked for violations of this chapter based on actions taken by the alcoholic beverage commission pursuant to § 57-4-202(c); and

(B) Notify the individual or business entity, which is listed as the permit holder at the same location where the alcoholic beverage license

had been suspended or revoked, of the date and time of the hearing.

(2) If the beer board finds that a sufficient violation or violations of this chapter have occurred at such location, then the beer board shall suspend or revoke the permit to the same extent and at least for the same period of time as the alcoholic beverage commission has suspended or revoked the license of the establishment pursuant to § 57-4-202(c).

(3) If the permit holder fails to appear or decides to surrender the permit to the beer board in lieu of appearing at the hearing, the permit shall be suspended or revoked by the beer board, and no permit to sell beer or malt beverages on the premises shall be issued by the beer board to any person for the location where the alcoholic beverage commission had suspended or revoked the license pursuant to § 57-4-202(c) for the period of time included in the decision of the alcoholic beverage commission.

(4) The decision of the beer board is final, and any party aggrieved thereby may appeal the decision of the beer board in accordance with this chapter.

(p) The pilot project established by subsections (n) and (o) shall only apply in counties having a population, according to the 2010 federal census or any subsequent federal census, of:

not less than	nor more than
6,800	6,900
19,100	19,150
22,600	22,675
32,200	32,300
35,600	35,700
51,400	51,500
56,800	56,900
336,400	336,500
432,200	432,300

History.

Acts 1943, ch. 53, § 3; C. Supp. 1950, § 1191.14; Acts 1961, ch. 105, § 2; 1965, ch. 123, § 1; 1965, ch. 321, § 4; 1969, ch. 56, § 1; 1969, ch. 299, § 1; 1971, ch. 21, § 1; 1973, ch. 68, § 7; 1977, ch. 454, § 1; impl. am. Acts 1978, ch. 934, §§ 7, 36; impl. am. Acts 1979, ch. 413, §§ 3, 4; T.C.A. (orig. ed.), § 57-209; Acts 1981, ch. 377, §§ 2-9; 1981, ch. 449, § 2; 1984, ch. 1006, § 7; 1985, ch. 315, § 2; 1989, ch. 147, § 6; 1989, ch. 583, §§ 1-4; 1990, ch. 889, § 1; 1993, ch. 297, § 8; 1993, ch. 349, § 1; T.C.A., § 57-5-109; Acts 1996, ch. 641, § 1; 2006, ch. 864, § 11; 2012, ch. 742, § 1; 2012, ch. 881, § 1.

Compiler's Notes.

This section may be affected by Tennessee Rules of Appellate Procedure.

Acts 1989, ch. 147, § 12 provided that any and all matters filed or pending as of July 1, 1989, shall be disposed of under prior law.

Acts 1989, ch. 583, § 5 provided the amendment by that act applies to the review of any action or order issued on or after July 1, 1989.

Former § 57-5-108, concerning the alcoholic beverage licensing powers of cities, towns and class B counties, was transferred to § 57-5-106 in 1993.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Cross-References.

Eighteen-year-olds, legal responsibility, alcoholic beverage restrictions on persons under 21, § 1-3-113.

Intestate succession, title 31, ch. 2.

Prohibited acts, title 57, ch. 5, part 3.

Textbooks.

Gibson's Suits in Chancery (7th ed., Inman), § 664.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 4, 5, 7, 9, 22; 19 Tenn. Juris., Municipal Corporations, § 52.

Law Reviews.

Judicial Review under the Tennessee Uniform Administrative Procedures Act — An Update (Ben H. Cantrell), 13 Mem. St. U.L. Rev. 589 (1984).

Attorney General Opinions.

Constitutionality and applicability, OAG 90-77 (8/13/90).

A vendor who is caught selling beer to a minor is subject to criminal penalties imposed by the local criminal court ranging from a class A misdemeanor to a class E felony and is also subject to the suspension or revocation of his permit imposed by the local beer board, OAG 01-062 (4/20/01).

A city controls the traffic of beer within its corporate limits by virtue of its permit-issuing power and the ordinances it passes to delineate and enforce this power; a referendum is not necessary to approve beer sales in an incorporated city and the legislature has not given cities the right to conduct such a referendum, OAG 02-092 (8/28/02).

The imposition of fines greater than fifty dollars by a municipal beer board pursuant to T.C.A. § 57-5-108(2)(A) does not implicate Tenn. Const., art. VI, § 14, OAG 05-056 (4/20/05).

All disciplinary powers accorded by T.C.A. § 57-5-108(2)(A) are constitutionally available to municipal beer boards, OAG 05-056 (4/20/05).

Implementation of beer permit distance requirement. OAG 10-98, 2010 Tenn. AG LEXIS 108 (9/15/10).

NOTES TO DECISIONS

Analysis

1. In General.
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8. —Petition— Status of Signers.
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18. Final Order.
19. Refusal to Grant Permit.
20. Applicant's Rights Pending Review.

1. In General.

These statutes confer upon beer boards the right to revoke for any of the reasons which would disqualify an applicant in the first instance. Midgett v. Smith, 591 S.W.2d 765, 1979 Tenn. LEXIS 530 (Tenn. 1979).

2. Constitutionality.

Contention that this section amounted to class legislation was without merit as traffic in intoxicating liquors, beer and the like may be prohibited altogether, or regulated and restricted in such manner as the legislature may see fit. McClellan v. State, 199 Tenn. 60, 282 S.W.2d 631, 1955 Tenn. LEXIS 428 (1955).

Contention that this section as enacted by the 1943 amendment to Acts 1933, ch. 69, was broader than the caption of the original act was without merit after the section was reenacted by the 1950 Code supplement. McClellan v. State, 199 Tenn. 60, 282 S.W.2d 631, 1955 Tenn. LEXIS 428 (1955).

Acts 1961, ch. 105, amending this section and § 57-5-105 so as to provide for review of refusal of beer license by statutory writ of certiorari with trial de novo was not unconstitutional as requiring courts to exercise administrative function in reviewing action of beer boards. Fentress County Beer Board v. Cravens, 209 Tenn. 679, 356 S.W.2d 260, 1962 Tenn. LEXIS 404 (1962).

Court, in reviewing actions of boards as provided by this section, exercises judicial and not administrative functions and does not violate the separation of powers doctrine. Metropolitan Beer Permit Board v. Elkins, 224 Tenn. 237, 453 S.W.2d 769, 1970 Tenn. LEXIS 321 (1970).

It was competent for legislature to provide for review of actions of board by statutory writ of certiorari and the statutory writ was in no way in conflict with the constitutional writ authorized by Tenn. Const., art. VI, § 10, but rather expanded the scope of review. Metropolitan Beer Permit Board v. Elkins, 224 Tenn. 237, 453 S.W.2d 769, 1970 Tenn. LEXIS 321 (1970).

3. Revocation.

4. —Nature and Effect.

The revocation of a license issued under these sections is not for punishment, but because by violation of the conditions under which the license was issued the licensee shows that he was not a proper person to hold it, and such a revocation does not oust the jurisdiction of the courts to inflict fines or terms of imprisonment on the person to whom the license has been issued and who has violated the law by its misuse. Henderson v. Grundy County Beer Committee, 176 Tenn. 397, 141 S.W.2d 901, 1939 Tenn. LEXIS 130 (1940).

Revocation of a license is not intended as a punishment of the holder but to insure as far as

possible the decent and orderly conduct of the establishment. Flowers v. Benton County Beer Board, 202 Tenn. 56, 302 S.W.2d 335, 1957 Tenn. LEXIS 363 (1957).

The power of a county legislative body or beer committee to revoke a beer permit is incidental to the power to grant a permit. Henderson v. Grundy County Beer Committee, 176 Tenn. 397, 141 S.W.2d 901, 1939 Tenn. LEXIS 130 (1940).

5. —Hearing.

Although the notice of the hearing to determine whether the permit to sell beer should be revoked did not contain the grounds for revocation, this deficiency did not require reversal since the licensee's husband had been arrested for the sale of beer to minors in her store and furthermore the procedural safeguards under the statutory writ of certiorari with a trial de novo all but obliterate the necessity of notice. Richards v. Lewisburg Alcoholic Beverage Com., 543 S.W.2d 852, 1977 Tenn. LEXIS 520 (Tenn. 1977).

6. —Facts Constituting Grounds.

Board did not err in revoking license to sell beer where licensee sold beer at a tavern not erected until two years after application was filed. Tucker v. Carter County Beer Board, 191 Tenn. 210, 232 S.W.2d 38, 1950 Tenn. LEXIS 566 (1950).

License was properly revoked by board where licensee moved location to a spot some distance away from place designated in application for license and continued to sell beer in violation of provisions of license. Sowell v. Red, 192 Tenn. 681, 241 S.W.2d 775, 1951 Tenn. LEXIS 315 (1951).

Board cannot revoke a permit except for violation of a condition found within the statute. Young v. Warren County Beer Board, 195 Tenn. 211, 258 S.W.2d 763, 1953 Tenn. LEXIS 325 (1953).

Beer board was authorized to revoke license for selling of beer to minors. Evers v. Hollman, 196 Tenn. 364, 268 S.W.2d 97, 1954 Tenn. LEXIS 390, 1954 Tenn. LEXIS 391 (1954).

Board was justified in revoking beer license on the ground that holder of license had allowed persons to congregate in beer place after legal hours and there was evidence that there were six persons in the place after closing time and drunks had been removed from place on several occasions. Presson v. Benton County Beer Board, 198 Tenn. 489, 281 S.W.2d 63, 1955 Tenn. LEXIS 398 (1955).

Where there was material evidence that wholesale beer dealer was selling at retail in addition to the fact that beer was being sold within 2,000 feet of a church, fact that it was not established that there was an ordinance prohibiting sale of beer within 2,000 feet of public gathering places was not material as there was sufficient evidence aside from this to justify beer committee's revocation of permit. Jones v. Sullivan County Beer Board, 200 Tenn. 301, 292 S.W.2d 185, 1956 Tenn. LEXIS 410 (1956).

A county may revoke a beer sale license on the basis of a sale to a minor. Richards v. Lewisburg Alcoholic Beverage Com., 543 S.W.2d 852, 1977 Tenn. LEXIS 520 (Tenn. 1977).

Evidence of illegal drug sales made on premises by employee supported revocation of license by beer board. Williams v. Beer Bd. of Gallatin, 737 S.W.2d 534, 1987 Tenn. LEXIS 973 (Tenn. 1987).

7. —Facts Not Constituting Grounds.

Driving an automobile while under influence of whiskey or other intoxicant is denounced by statute but it is not an act involving moral turpitude and is not ground for revocation of beer permit. Flowers v. Benton County Beer Board, 202 Tenn. 56, 302 S.W.2d 335, 1957 Tenn. LEXIS 363 (1957).

Where beer permit permitted sale by package and not by drink, fact that minors frequented place of business was not ground for revocation of permit where there was nothing to show that they drank or handled beer or any evidence of other improper activities. Flowers v. Benton County Beer Board, 202 Tenn. 56, 302 S.W.2d 335, 1957 Tenn. LEXIS 363 (1957).

Where church was established many years after holder of beer permit was granted such permit, action of beer committee in revoking permit solely because permit holder's place of business was within 2,000 feet of church was arbitrary and unreasonable. Sparks v. Beer Committee of Blount County, 207 Tenn. 312, 339 S.W.2d 23, 1960 Tenn. LEXIS 460 (1960).

Where the statute did not require property owner approval for the granting of a permit, fraud in naming property owners was not a ground for revoking a permit. Young v. Warren County Beer Board, 195 Tenn. 211, 258 S.W.2d 763, 1953 Tenn. LEXIS 325 (1953).

8. —Petition— Status of Signers.

Signers of petition seeking revocation of petitioner's permission to sell beer though not strictly parties to the proceeding were entitled to testify at hearing since they were relators or prosecuting witnesses and were not subject to the rule. Anderson v. Putnam County Beer Board, 184 Tenn. 623, 201 S.W.2d 994, 1947 Tenn. LEXIS 285 (1947).

9. —Ten-Day Revocation.

The statute does not limit revocation of a beer license to 10 days where the prospective underage purchasers did not present identification cards and they did not have the appearance of maturity. Richards v. Lewisburg Alcoholic Beverage Com., 543 S.W.2d 852, 1977 Tenn. LEXIS 520 (Tenn. 1977).

Where all of the minors admitted in violation of the law were under 18 years of age, the trial judge erroneously applied T.C.A. § 57-5-108 (b) in limiting the suspension of license to 10 days for the violation. Metropolitan Beer Permit Bd. etc. v. Jones, 625 S.W.2d 267, 1981 Tenn. LEXIS 507 (Tenn. 1981).

10. —Enjoining Revocation.

Chancellor did not have jurisdiction of bill to enjoin revocation of permit to sell beer held by petitioner on the ground that beer board was not legally created since remedy to prevent revocation of permit was by certiorari to circuit court. Crowe v. Carter County, 195 Tenn. 659, 263 S.W.2d 509, 1953 Tenn. LEXIS 393 (1953).

11. Bill in Chancery Questioning Election of Board.

Beer licensee, whose license was about to be revoked by new beer committee was not entitled to file bill in chancery for the purpose of determining validity of election of beer committee since right of review for revocation of beer license is by certiorari addressed to circuit court. State ex rel. Thurman v. Scott, 184 Tenn. 76, 195 S.W.2d 617, 1946 Tenn. LEXIS 262 (1946).

12. Review.

In proceeding to review action of county beer board for revocation of beer permit the proceeding is under the common-law writ of certiorari and only question before reviewing court is whether the board acted fraudulently, illegally or exceeded its jurisdiction. Putnam County Beer Board v. Speck, 184 Tenn. 616, 201 S.W.2d 991, 1947 Tenn. LEXIS 284 (1947).

The scope of review of the action of county beer board in revoking license was the determination of whether such action was arbitrary or illegal. Sowell v. Red, 192 Tenn. 681, 241 S.W.2d 775, 1951 Tenn. LEXIS 315 (1951).

This section expressly limits judicial review of actions of county beer boards to that provided by the common-law writ of certiorari. Sowell v. Red, 192 Tenn. 681, 241 S.W.2d 775, 1951 Tenn. LEXIS 315 (1951); Bragg v. Boyd, 193 Tenn. 507, 246 S.W.2d 575, 1952 Tenn. LEXIS 317 (1952).

Where both parties brought error upon action of circuit judge in remanding cause to county beer board for final and proper order, their appeals were properly taken from circuit court directly to supreme court. Bragg v. Boyd, 193 Tenn. 507, 246 S.W.2d 575, 1952 Tenn. LEXIS 317 (1952).

Evidence of matters that arose after the hearing of the board revoking license cannot be considered by the circuit court on review, but only whether the record before the board justified the revocation. Black v. Nashville, 197 Tenn. 544, 276 S.W.2d 718, 1955 Tenn. LEXIS 314 (1955).

Action in chancery court to enjoin city and board from appealing decision of circuit court which restored beer license revoked by board, was a collateral attack on judgment of another court which was improper since the proper method for correcting errors of a court is by appeal. Black v. Nashville, 197 Tenn. 544, 276 S.W.2d 718, 1955 Tenn. LEXIS 314 (1955).

The scope of review under this section is expressly limited to that prescribed by the common-law writ of certiorari. Chanaberry v. Gordy, 200 Tenn. 220, 292 S.W.2d 18, 1956 Tenn. LEXIS 398 (1956).

The writ of certiorari plainly and clearly applies where the board or officers acting as such have exceeded the jurisdiction conferred upon them by statute or where they are acting arbitrarily and illegally. Chanaberry v. Gordy, 200 Tenn. 220, 292 S.W.2d 18, 1956 Tenn. LEXIS 398 (1956).

Circuit court did not err in not requiring beer board to file complete transcript of proceedings where additional testimony would have been cumulative on the issue of the way and manner in which licensee conducted his business. Flowers v. Benton County Beer Board, 202 Tenn. 56, 302 S.W.2d 335, 1957 Tenn. LEXIS 363 (1957).

Review under this section is limited to a determination of whether the administrative board acted fraudulently, illegally or exceeded its jurisdiction. Shelton v. Mooneyhan, 205 Tenn. 425, 326 S.W.2d 825, 1959 Tenn. LEXIS 380 (1959).

Motion for new trial was necessary for supreme court to review action of circuit court in sustaining county beer board in revoking beer license. Shelton v. Mooneyhan, 205 Tenn. 425, 326 S.W.2d 825, 1959 Tenn. LEXIS 380 (1959).

Where there was no dispute about the facts, and facts appeared in petition for certiorari filed in the circuit court, and the statute permitted no additional evidence to be heard in circuit court, transcript of record properly certified by county clerk and then by clerk of circuit court constituted adequate bill of exceptions and became a part of the technical record without the necessity of any further identification or order by circuit judge, and motion to dismiss appeal to supreme court on ground that no bill of exceptions was filed was without merit. Shelton v. Mooneyhan, 205 Tenn. 425, 326 S.W.2d 825, 1959 Tenn. LEXIS 380 (1959).

Obligation to see that application for permit or other papers which were before beer board were sent up to superior court was upon person who filed petition for certiorari. Hughes v. Little, 213 Tenn. 574, 376 S.W.2d 482, 1964 Tenn. LEXIS 424 (1964).

Motion for new trial is not a prerequisite to appeal to supreme court from trial court's review of action of beer committee on granting, denying or revoking beer permit. Chadwick v. Beer Committee of Anderson County, 213 Tenn.

592, 376 S.W.2d 490, 1964 Tenn. LEXIS 426 (1964).

Where, upon review of action of city beer permit board, chancellor did not weigh the evidence but merely found that the board did not act "illegally, capriciously or unreasonably" in refusing permit, the case was reversed and remanded for a trial de novo of the issues had upon such proof as the parties might desire to introduce pursuant to the provisions of § 27-9-111. Case v. Carney, 213 Tenn. 597, 376 S.W.2d 492, 1964 Tenn. LEXIS 427 (1964).

On appeal to the supreme court the action of the trial judge in granting or denying an application for a beer permit is presumed to be correct, and the judgment of the trial judge will not be reversed unless the evidence preponderates against the judgment. Memphis Alcohol Com. v. Randall Memorial Free Will Baptist Church, Inc., 550 S.W.2d 657, 1977 Tenn. LEXIS 539 (Tenn. 1977).

Where no reason existed for the denial of a beer permit except a distance requirement which was invalidated by the chancery court, the conduct of the city council, acting as a beer board, from and after the date of the court's invalidation was tantamount to a denial of the application without good cause; and a petition for certiorari was timely filed by the applicant for the permit after the city council refused to dispose of the application as ordered by the chancery court, and the chancery court was entitled to treat the petition for certiorari as equivalent to one filed under this section for review of the denial of a permit. Murfreesboro v. Fortner, 570 S.W.2d 859, 1978 Tenn. LEXIS 638 (Tenn. 1978).

Under T.C.A. §§ 57-5-105 and 57-5-108 the decree of a trial court granting or denying a beer permit comes to the appellate court accompanied by a presumption of correctness and the burden is upon the appellant to show that the evidence preponderates against the judgment of the trial court. Hinkle v. Montgomery, 596 S.W.2d 800, 1980 Tenn. LEXIS 439 (Tenn. 1980).

In reviewing a judgment of a trial court in cases involving beer permits, the evidence before the beer board is of no consequence, since the matter is heard in a trial de novo in the circuit or chancery court. McCarter v. Goddard, 609 S.W.2d 505, 1980 Tenn. LEXIS 515 (Tenn. 1980).

Failure of agency to make timely filing of transcript did not warrant reversal of permit revocation where permittee was not prejudiced by the delay. Cooper v. Alcohol Com. of Memphis, 745 S.W.2d 278, 1988 Tenn. LEXIS 7 (Tenn. 1988).

13. —Court Rules.

The specific mandates of T.C.A. § 57-5-108 take precedence over the general provisions of the appellate rules. Cooper v. Alcohol Com. of Memphis, 745 S.W.2d 278, 1988 Tenn. LEXIS 7 (Tenn. 1988).

The Tennessee Rules of Appellate Procedure, not the Tennessee Rules of Civil Procedure, are applicable to circuit and chancery courts in reviewing beer board cases. Cooper v. Alcohol Com. of Memphis, 745 S.W.2d 278, 1988 Tenn. LEXIS 7 (Tenn. 1988).

14. Trial de Novo.

Under the 1961 amendment to this section a person aggrieved by the action of a beer board has the sole remedy of having the same reviewed in either the circuit or chancery court by statutory writ of certiorari with trial de novo as a substitute for appeal with the cause being tried as if it had originated in such court and the trial judge is required to make an independent judgment of the merits substituting his judgment for that of the beer board. Cantrell v. De Kalb County Beer Board, 213 Tenn. 568, 376 S.W.2d 480, 1964 Tenn. LEXIS 423 (1964); Hughes v. Little, 213 Tenn. 574, 376 S.W.2d 482, 1964 Tenn. LEXIS 424 (1964); Chadwick v. Beer Committee of Anderson County, 213 Tenn. 592, 376 S.W.2d 490, 1964 Tenn. LEXIS 426 (1964); Case v. Carney, 213 Tenn. 597, 376 S.W.2d 492, 1964 Tenn. LEXIS 427 (1964); Ewin v. Richardson, 214 Tenn. 628, 382 S.W.2d 532, 1964 Tenn. LEXIS 515 (1964).

Applicant for beer permit was entitled to trial de novo in circuit court on merits of his application and where circuit court merely found that beer board did not act arbitrarily, capriciously, illegally or in excess of its jurisdiction the cause would be remanded for a trial de novo on the issues. Ewin v. Richardson, 214 Tenn. 628, 382 S.W.2d 532, 1964 Tenn. LEXIS 515 (1964).

"Trial de novo" means the cause is tried as if it originated in the circuit or chancery court: the judge substitutes his judgment for that of the beer board. Richards v. Lewisburg Alcoholic Beverage Com., 543 S.W.2d 852, 1977 Tenn. LEXIS 520 (Tenn. 1977).

15. Certiorari.

If a board tables an application for a permit for reasons completely extraneous to the qualifications of an applicant such that further pursuit of a permit through administrative channels would be futile, then the courts should grant the writ of certiorari. McCarter v. Goddard, 609 S.W.2d 505, 1980 Tenn. LEXIS 515 (Tenn. 1980).

16. —Writ Properly Granted.

A county beer board clearly acted in excess of its authority when it tabled an application for a permit in order to consider building setback regulations, and where counsel for the applicant raised his objection in a timely manner when the board took the setback problem under consideration, the chancellor was correct in granting the writ of certiorari. McCarter v.

Goddard, 609 S.W.2d 505, 1980 Tenn. LEXIS 515 (Tenn. 1980).

17. —Writ Not Available.

Insofar as the tabling action functions as a notice of a continuance, it is not an order and a writ of certiorari under this section cannot be granted. McCarter v. Goddard, 609 S.W.2d 505, 1980 Tenn. LEXIS 515 (Tenn. 1980).

18. Final Order.

Under certain circumstances a tabling action by the board can operate as a final order. McCarter v. Goddard, 609 S.W.2d 505, 1980 Tenn. LEXIS 515 (Tenn. 1980).

19. Refusal to Grant Permit.

If a board needlessly prolongs an application for permit by tabling it, the board has in effect denied the application. McCarter v. Goddard, 609 S.W.2d 505, 1980 Tenn. LEXIS 515 (Tenn. 1980).

20. Applicant's Rights Pending Review.

An applicant who has been denied a permit is not entitled to a temporary permit when the trial court has reversed the board and the board has appealed. Watkins v. Naifeh, 635 S.W.2d 104, 1982 Tenn. LEXIS 416 (Tenn. 1982).

57-5-109. Proximity to schools, residences, churches, places of public gatherings.

(a) A city or county shall not suspend, revoke or deny a permit to a business engaged in selling, distributing or manufacturing beer on the basis of the proximity of the business to a school, residence, church, or other place of public gathering if a valid permit had been issued to any business on that same location. This section shall not apply if beer is not sold, distributed or manufactured at that location during any continuous six-month period.

(b) For the purposes of this section, "on that same location" means within the boundaries of the parcel or tract of the real property on which the business was located. This section applies whether or not a business moves the building on the location and whether or not the business was a conforming or nonconforming use at the time of the move.

(c) If a business applies for a beer permit within the continuous six-month period referenced in this section, and if the city or county denies the business a permit and if the business appeals that denial, a new six-month continuous sale period shall begin to run on the date when the appeal of that denial is final.

History.

Acts 1993, ch. 297, § 9; 1997, ch. 560, § 1; 2002, ch. 744, § 1; 2004, ch. 598, § 2.

Compiler's Notes.

Former § 57-5-109, concerning the revocation of alcoholic beverage permits and licenses, was transferred to § 57-5-108 in 1993.

Attorney General Opinions.

Distance requirements for beer sales in Washington County, OAG 94-110 (10/6/94).

Loss of grandfathered beer permit status, OAG 98-022 (1/23/98); OAG 98-069 (3/25/98).

A county can reestablish a beer permit distance rule without revoking a permit to sell beer previously issued to a business that does not meet that rule, and the continued existence of such a "grandfathered" permit will not invalidate the reinstatement of the rule or imposition of a new distance rule, OAG 01-157 (10/25/01).

If a county legislative body had passed a resolution prohibiting the issuance of a beer permit for locations within two thousand feet of schools, churches, or other places of public gathering, and later issued permits in violation of such distance requirement, it could not at a later date readopt such a distance restriction, the effect of which would basically grandfather all such permits without revoking all permits issued in violation of the earlier adopted distance, OAG 04-012 (2/03/04).

A county legislative body may adopt a distance requirement of less than two thousand feet by setting the distance at a point which would basically grandfather all permits issued in violation of an earlier two thousand foot distance, OAG 04-012 (2/03/04).

NOTES TO DECISIONS

Analysis

1. Construction.
2. Application.

1. Construction.

The grandfather provision in T.C.A. § 57-5-109 had to be construed narrowly, and, as a result of the method of measuring distance employed by the metropolitan code, the phrase "on that same location" required that the corporation's new building in which beer was sold be situated in compliance with the earlier distance regulation so as to remain consistent with the grandfather exemption from the beer permit requirements; because the new beer store was located less than 100 feet from a daycare center in violation of the metropolitan code, the corporation was not entitled to the benefit of the grandfather clause. Exxonmobil Oil Corp. v. Metro. Gov't of Nashville & Davidson County, 246 S.W.3d 31, 2005 Tenn. App. LEXIS 375 (Tenn. Ct. App. June 28, 2005), appeal denied, — S.W.3d —, 2005 Tenn. LEXIS 1143 (Tenn. 2005)

In amending T.C.A. § 57-5-109, regarding beer licenses, the general assembly clarified its intent regarding the definition of "on that same location," defining the phrase differently from the Tennessee Supreme Court; it also clarified the situation with regard to prior use to which T.C.A. § 57-5-109 would apply. Exxonmobil Oil Corp. v. Metro. Gov't of Nashville & Davidson County, 246 S.W.3d 31, 2005 Tenn. App. LEXIS 375 (Tenn. Ct. App. June 28, 2005), appeal denied, — S.W.3d —, 2005 Tenn. LEXIS 1143 (Tenn. 2005).

2. Application.

Protection of T.C.A. § 57-5-109 was not available to a county beer board to justify the continuation of the discriminatory practice of issuing beer permits to nonconforming locations. Exxonmobil Oil Corp. v. Metro. Gov't of Nashville & Davidson County, 246 S.W.3d 31, 2005 Tenn. App. LEXIS 375 (Tenn. Ct. App. June 28, 2005), appeal denied, — S.W.3d —, 2005 Tenn. LEXIS 1143 (Tenn. 2005)

Pursuant to T.C.A. § 57-5-109(c), a company was not precluded from a permit due to its cessation of beer sales during the litigation over its permit applications where it filed its second application within six months of the Tennessee Supreme Court's decision upholding the denial of its first permit and the pendency of the proceeding during the first permit application stayed the running of the six-month period. Exxonmobil Oil Corp. v. Metro. Gov't of Nashville & Davidson County, 246 S.W.3d 31, 2005 Tenn. App. LEXIS 375 (Tenn. Ct. App. June 28, 2005), appeal denied, — S.W.3d —, 2005 Tenn. LEXIS 1143 (Tenn. 2005).

Where a company purchased a business that had sold beer under a valid license granted prior to January 1, 1993, a city and county beer board had no authority to deny a company's second license application on the basis that its new building contravened Metro. Gov't Nashville & Davidson County, Tenn., Code Laws § 7.08.090(A)(1)'s 100-foot proximity requirement by being only 84 feet from a daycare center because doing so contravened T.C.A. § 57-9-105 as amended and exceeded the board's statutory authority. Exxonmobil Oil Corp. v. Metro. Gov't of Nashville & Davidson County, 246 S.W.3d 31, 2005 Tenn. App. LEXIS 375 (Tenn. Ct. App. June 28, 2005), appeal denied, — S.W.3d —, 2005 Tenn. LEXIS 1143 (Tenn. 2005).

If an applicant for a beer license meets the conditions set out in T.C.A. § 57-5-109, it is entitled to the protection of T.C.A. § 57-5-109, and a county beer board is prohibited from denying its application on the basis of the proximity restrictions in Metro. Gov't Nashville & Davidson County, Tenn., Code Laws § 7.08.090(A)(1). Exxonmobil Oil Corp. v. Metro. Gov't of Nashville & Davidson County, 246 S.W.3d 31, 2005 Tenn. App. LEXIS 375 (Tenn. Ct. App. June 28, 2005), appeal denied, — S.W.3d —, 2005 Tenn. LEXIS 1143 (Tenn. 2005).

57-5-110. Bonds of warehousemen, dealers and manufacturers — Terms and conditions — Alternative collateral.

(a) All persons, firms, corporations, joint-stock companies, syndicates or associations in this state storing, selling, distributing and/or manufacturing beer in this state shall execute a bond securing the payment of the taxes levied, as the state privilege tax, under provisions hereof, the bond to be payable to the commissioner of revenue and to be signed by some solvent surety company residing in or having an office and agent in this state, and to be approved by the commissioner.

(b) Such bond shall be conditioned upon and posted to secure the proper payment of all taxes for which the taxpayer may become liable during the

taxpayer's initial license period of twelve (12) months, in the minimum penal sum of twenty thousand dollars ($20,000); provided, that after monthly reports have been received by the department which cover the initial three (3) full months of such person's operating experience, the penal sum may, upon written request of the taxpayer, be adjusted to an amount equal to no less than twice the amount of the tax required to be paid by such person per month and shall be determined by averaging such tax over the period of months immediately preceding the adjustment. If, at any time after the initial three (3) months operating experience, the commissioner shall determine the average monthly tax liability of a taxpayer to be greater than twenty thousand dollars ($20,000), the taxpayer shall be required to immediately file a rider to the taxpayer's bond to increase the penal sum of the bond to two (2) times the taxpayer's average monthly tax liability as determined by the commissioner.

(c) If, at any time after the execution of the bond, the surety thereon shall become insolvent, the commissioner may require the execution of a new bond with good and solvent surety in the same manner and with the same penalty as aforementioned, and subject to the approval of the commissioner, and any person executing a bond under this chapter may, at any time prior to default under any existing bond, apply to the commissioner for cancellation of the existing bond and for leave to file a new bond with new surety thereon in accordance with the provisions aforementioned, and shall have the right to file such new bond, at such time, by and with the approval of the commissioner.

(d) In lieu of a corporate surety on such bond as required by subsection (a), the commissioner may allow the applicant to secure such bond by depositing collateral in the form of a certificate of deposit as accepted and authorized by the banking laws of this state, which has a face value equal to the amount of the bond. Such collateral may be deposited with any authorized state depository designated by the commissioner.

(e)(1) If a taxpayer has been in continuous operation for three (3) consecutive years and during the preceding six (6) months has paid the special privilege tax in § 57-5-201(a)(1), for which the taxpayer is liable within the time period for payment set by the statute or rule, then the taxpayer shall not be required to execute and maintain any bond required by this section.

(2) Any taxpayer exempted from the bonding requirement of this section who fails to pay the special privilege tax in § 57-5-201(a)(1), within the time period for payment set by statute or rule shall, upon such failure, be required to execute and maintain a bond as required in this section.

History.

Acts 1933, ch. 69, § 6; C. Supp. 1950, § 1191.6; impl. am. Acts 1959, ch. 9, § 14; T.C.A. (orig. ed.), § 57-206; Acts 1983, ch. 379, §§ 1-3; 1986, ch. 676, § 2; 1988, ch. 519, § 1; 1992, ch. 607, § 1; 1993, ch. 297, § 6; T.C.A., § 57-5-106.

Compiler's Notes.

Former § 57-5-110 (Acts 1980, ch. 771, § 1), concerning alcoholic beverage licensee's responsibility to prominently display sign warning of felonious consequences of carrying weapon onto premises where alcoholic beverages are sold or served, was repealed by Acts 1987, ch. 259, § 1.

Former § 57-5-110 was transferred to § 57-5-109 in 1993.

57-5-111. Homemade beer.

(a) For purposes of this section:

(1) "Beer" has the same meaning as the term is defined in § 57-5-101(b); and

(2) "Homemade," with respect to the making of beer, means beer made by a person's own efforts and not for a commercial purpose, but does not require that the beer be made in the person's home.

(b)(1) No license or permit shall be required under this title for the making of homemade beer, and the possession, transportation, or storage of homemade beer, by any person if all of the following apply:

(A) The person who makes the beer receives no compensation;

(B) The beer is not sold or offered for sale; and

(C) The total quantity of beer made, in a calendar year, by the person and any other person living in the same household does not exceed one hundred gallons (100 gal.) if the household has only one (1) person of legal drinking age or two hundred gallons (200 gal.) if the household has two (2) or more persons of legal drinking age.

(2) A person who makes, possesses, transports, or stores beer in compliance with the limitations specified in subdivision (b)(1) is not a manufacturer of beer for purposes of this chapter.

(3) Any homemade beer in compliance with subdivision (b)(1) that is being transported shall be clearly identified as homemade beer.

(4) Homemade beer made in compliance with the limitations in subdivision (b)(1) may be consumed by the person who made it and the person's family, neighbors, and friends at any private residence or other private location where the possession and consumption of beer is permissible under this chapter, local ordinances, or other applicable law. This subdivision (b)(4) does not apply to licensed premises under this chapter.

(c) The use of homemade beer made in compliance with the limitations specified in subdivision (b)(1) is allowed for purposes of exhibition, demonstration, judging, tasting, or sampling or as part of a contest or competition, if the exhibition, demonstration, judging, tasting, sampling, contest, or competition is held at a private residence or on a licensed premises. Homemade beer used for purposes described in this subsection (c), including the submission or consumption of such beer, shall not be considered sold or offered for sale, and any prize awarded at a contest or competition or as a result of an exhibition, demonstration, judging, tasting, or sampling shall not be considered compensation. No fee may be charged for consumption of the homemade beer at the exhibition, demonstration, judging, tasting, sampling, contest, or competition; provided, however, an entrance fee may be charged to persons attending an exhibition, contest, or competition.

(d)(1) Notwithstanding any law to the contrary, a person who is not a permit holder under this chapter may, at a private residence, and a person who is a permit holder under this chapter may, on the permitted premises, conduct, sponsor, or host a contest, competition, or other event for the exhibition, demonstration, judging, tasting, or sampling of homemade beer made in compliance with the limitations specified in subdivision (b)(1) if the person does not sell the beer and, unless the person is the maker of the beer, does not acquire any ownership interest in the beer.

(2) No fee may be charged for consumption of homemade beer at the contest, competition, or other event; provided, however, an entrance fee may

be charged to persons attending a contest, competition, or other event.

(3) If the contest, competition, or other event is held on a permitted premises, the permit holder may allow the homemade beer to be stored on the premises if the homemade beer is clearly identified and kept separate from any alcoholic beverages or beer owned by the permit holder. Any homemade beer stored on the premises shall be removed within twenty-four (24) hours after the contest, competition, or other event has ended.

(e) Any city or county may regulate contests, competitions, or other events for the exhibition, demonstration, judging, tasting, or sampling of homemade beer as described in subsection (d), including requiring a permit for the contests, competitions, or other events.

(f) No taxes levied or collected pursuant to this title shall be applicable to any homemade beer made in compliance with subdivision (b)(1).

History.
Acts 2015, ch. 69, § 1.

Compiler's Notes.
Former § 57-5-111, concerning the sale of beer by hotels and motels to guests, was transferred to § 57-5-107 in 1993.

57-5-112. Beer container size — Labeling.

(a) Any wholesaler or retailer selling or distributing any product regulated under this chapter in a twenty-five and four-tenths ounce (25.4 oz.) container may distribute such container only if the container has affixed to it a label, printed in at least three-sixteenths inches ($^3/_{16}$″) type, which states "flavored beer." Nothing herein shall be construed to impose upon a brewer or importer the duty to affix the labels required under this subsection (a) prior to sale to a wholesaler.

(b) Any retail permittee or licensee under this title which elects to distribute any beer product in a twenty-five and four-tenths ounce (25.4 oz.) container is prohibited from indicating, directly or indirectly, that the product is not a flavored beer product. Any retail permittee or licensee violating this section shall be subject to sanctions imposed by law.

History.
Acts 1997, ch. 560, § 2; 1998, ch. 857, § 1.

57-5-113. Sale of beer allowed any time authorized to sell liquor and wine — Beer permit required.

Any establishment that is permitted to sell liquor or wine for on-premises consumption pursuant to chapter 4 of this title shall be allowed to sell beer at any time the establishment is legally authorized to sell liquor or wine; provided, that the establishment has lawfully obtained a beer permit from the appropriate jurisdiction.

History.
Acts 2011, ch. 27, § 1.

57-5-114. Separate license for distribution of high alcohol content beer not required.

Any wholesale distributor of beer that has a valid wholesale license pursuant to this chapter is not required to obtain a separate license for the distribution of high alcohol content beer from the commission.

History.
Acts 2017, ch. 443, § 4.

PART 2

TAXATION

57-5-201. Barrel tax — Retailers to deal exclusively with Tennessee wholesalers and manufacturers. [Certain provisions subject to contingent repeal. See (a)(2).]

(a)(1) Every person, firm, corporation, joint-stock company, syndicate or association in this state storing, selling, distributing, or manufacturing such beer or other beverages as are described in this chapter shall pay a special privilege tax, in addition to all other taxes, in an amount equal to four dollars and twenty-nine cents ($4.29) per barrel of thirty-one liquid gallons (31 gals.) stored, sold, distributed by gift or sale or manufactured in this state; provided, that the rate shall be reduced by fifty cents (50¢) on July 1 of any year following the enactment of any state or federal law that imposes mandatory deposits by consumers on beverage containers sold in this state or on July 1, 2022, whichever occurs first. The tax upon barrels containing more or less than thirty-one gallons (31 gals.) shall be at a proportionate rate. Beer or other such beverage manufactured in Tennessee and thereafter exported for sale, distribution or gift, or dispensed gratuitously and consumed on the premises, shall not be included in the measure of the tax liability hereby provided for. The commissioner of revenue is authorized to promulgate rules and regulations for the purpose of securing the exemption hereby given and for the purpose of preventing such exemption from being claimed in the case of beer sold, distributed or given away in Tennessee. The burden shall be on the manufacturer claiming exemption to establish to the satisfaction of the collection officers that the beverage manufactured in Tennessee is exempt under this subsection (a).

(2) Notwithstanding any provision of this section or law to the contrary, any revenue generated from the increase in tax rates from three dollars and forty cents ($3.40) to three dollars and ninety cents ($3.90) shall be allocated to the highway fund for the purpose of funding programs for the prevention and collection of litter and trash and matters related thereto. No later than March 31 of each year, the department of transportation shall transmit to the governor, and the speakers of the house of representatives and senate a report listing the programs receiving funds generated by this subsection (a), the amount of funds received by each program, and the purpose for which the funds were spent. This subdivision (a)(2) shall be repealed on July 1 of any year following the enactment of any state or federal law that imposes

mandatory deposits by consumers on beverage containers sold in this state or on July 1, 2022, whichever occurs first.

(b) The tax levied in subsection (a) shall be a state tax and no county, municipality or taxing district shall have power to levy any like tax. This tax shall not apply to beverages previously used as a measure of tax under the provisions hereof.

(c) No retail dealer of beer, as defined in § 57-5-101(b), shall purchase beer from anyone other than a licensed wholesaler located in this state, and all such purchases shall be delivered by the wholesaler to the retailer's licensed premises only or directly to the retailer at the wholesaler's licensed premises. No wholesale distributor of beer shall purchase beer from anyone other than a licensed manufacturer, importer, or other wholesaler holding a permit issued pursuant to § 57-5-101, and all such purchases shall be delivered only at a warehouse facility owned or operated by the wholesaler and located within this state. Anyone importing or causing to be imported any beer, as defined in § 57-5-101(b), shall be liable as other wholesale distributors or dealers hereunder.

(d) Anything to the contrary notwithstanding, a retail dealer of beer as defined in § 57-5-101(b) may purchase such beverages directly from a manufacturer located in Tennessee, licensed hereunder, if the sale of such beverages by the manufacturer directly to retailers is authorized by law pursuant to § 57-5-101.

History.

Acts 1933, ch. 69, § 2; 1937, ch. 88, § 1; 1945, ch. 69, § 1; 1947, ch. 109, § 1; C. Supp. 1950, § 1191.2; impl. am. Acts 1959, ch. 9, § 14; Acts 1969, ch. 212, § 1; 1973, ch. 6, § 1; T.C.A. (orig. ed.), § 57-213; Acts 1981, ch. 307, §§ 1, 4; 1984, ch. 769, § 2; 1987, ch. 33, § 1; 1991, ch. 30, § 1; 1994, ch. 864, §§ 1, 2; 1995, ch. 2, § 1; 1999, ch. 81, §§ 1, 2; 2002, ch. 856, § 1b; 2005, ch. 86, § 1; 2010, ch. 616, § 1; 2014, ch. 861, §§ 9, 10; 2015, ch. 19, § 3; 2016, ch. 704, §§ 1, 2.

Compiler's Notes.

Acts 1987, ch. 33, § 1 provided that the provisions of §§ 57-5-201 and 67-4-402, containing the tax increases imposed by Acts 1981, ch. 307, and extended by Acts 1984, ch. 769, shall continue in effect until June 30, 1991, or until June 30 of any year following the enactment of any state or federal law which imposes mandatory deposits by consumers on beverage containers sold in Tennessee, notwithstanding any other provision of law to the contrary.

Acts 1991, ch. 30, § 1, effective June 1, 1991, provided that the provisions of this section and § 67-4-402, containing the tax increases imposed by Acts 1981, ch. 307, and extended by Acts 1984, ch. 769 and Acts 1987, ch. 33, shall continue in effect until June 30, 1995, or until June 30 of any year following the enactment of any state or federal law which imposes mandatory deposits by consumers on beverage containers sold in Tennessee, notwithstanding any other provision of law to the contrary.

Acts 1991, ch. 30, § 2 provided that § 1 of that act applies to all returns for taxes filed on or after June 1, 1991.

Acts 1995, ch. 2, § 1, effective June 1, 1995, provided that the provisions of this section and § 67-4-402, containing the tax increases imposed by Acts 1981, ch. 307, and extended by Acts 1984, ch. 769 and Acts 1987, ch. 33, and Acts 1991, ch. 30, shall continue in effect until June 30, 1999, or until June 30 of any year following the enactment of any state or federal law which imposes mandatory deposits by consumers on beverage containers sold in Tennessee, notwithstanding any other provision of law to the contrary.

Acts 1995, ch. 2, § 2 provided that § 1 of that act applies to all returns for taxes filed on or after June 1, 1995.

Acts 1999, ch. 81, § 1, effective June 1, 1999, provided that the provisions of this section and § 57-5-201, containing the tax increases imposed by Acts 1981, ch. 307, and extended by Acts 1984, ch. 769, Acts 1987, ch. 33, Acts 1991, ch. 30, and Acts 1995, ch. 2 shall continue in effect until June 30, 2005, or until June 30 of any year following the enactment of any state or federal law which imposes mandatory deposits by consumers on beverage containers sold in Tennessee, notwithstanding any other provision of law to the contrary.

Acts 1999, ch. 81, § 3 provided that the amendment in that act, adding the last sentence of (a)(2), shall apply to all tax returns filed on or after June 1, 1999.

Acts 2002, ch. 856, § 10, effective July 4, 2002, provided that notwithstanding any provision of law to the contrary, the commissioner of revenue is authorized to waive tax liability and associated interest and penalties otherwise imposed for failure to pay taxes levied pursuant to that act in a timely manner, but only to the extent that the taxpayer or vendor can demonstrate, to the commissioner's satisfaction, that the taxpayer's or vendor's noncompliance with the requirements of the act unavoidably and directly resulted from the close proximity of the effective date of the act with implementation of the increase in tax rates or items or activities taxed pursuant to the provisions of the act. Section 14(j) of the act provided that § 10 be repealed effective September 2, 2002.

Acts 2002, ch. 856, § 13 provided that no expenditure of public funds pursuant to that act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

Acts 2005, ch. 86, § 1, effective June 1, 2005, provided that the provisions of this section and § 67-4-402, containing the tax increases imposed by Acts 1981, ch. 307, and extended by Acts 1984, ch. 769, Acts 1987, ch. 33, Acts 1991, ch. 30, Acts 1995, ch. 2, and Acts 1999, ch. 81 shall continue in effect until June 30, 2010, or until June 30 of any year following the enactment of any state or federal law which imposes mandatory deposits by consumers on beverage containers sold in Tennessee, notwithstanding any other provision of law to the contrary, and shall apply to all tax returns filed on or after June 1, 2005.

Acts 2010, ch. 616, § 1, effective June 1, 2010, provided that the provisions of this section and 67-4-402, containing the tax increases imposed by Acts 1981, ch. 307, and extended by Acts 1984, ch. 769, Acts 1987, ch. 33, Acts 1991, ch. 30, Acts 1995, ch. 2, Acts 1999, ch. 81 and Acts 2005, ch. 86, shall continue in effect until June 30, 2016, or until June 30 of any year following the enactment of any state or federal law which imposes mandatory deposits by consumers on beverage containers sold in Tennessee, notwithstanding any other provision of law to the contrary; and Acts 2010, ch. 616, 2 provided that the act shall apply to all tax returns filed on or after June 1, 2010.

Acts 2016, ch. 704 § 2, which amended subdivision (a)(2), provided that subdivision (a)(2) shall be repealed on July 1 of any year following the enactment of any state or federal law that imposes mandatory deposits by consumers on beverage containers sold in this state or on July 1, 2022, whichever occurs first.

Acts 2016, ch. 704 § 5 provided that it is the legislative intent that the temporary taxes contained in §§ 57-5-201 and 67-4-402, and first imposed by Acts 1981, ch. 307, are reenacted and extended in accordance with the act which amended this section.

Acts 2016, ch. 704 § 6 provided that the act, which amended this section, shall apply to all tax returns filed on or after June 1, 2016.

Cross-References.

Privilege tax on bottlers and manufacturers of soft drinks, § 67-4-402.

Work on roads by prisoners, funding, § 41-2-123.

Law Reviews.

An Examination of The Tennessee Law of Administrative Procedure (George Street Boone), 1 Vand. L. Rev. 339.

A Focus on Taxes: The Tennessee Tax Reform Act of 2002 Explained, 38 No. 9 Tenn. B.J. 12 (2002).

Building a House of Cards: A Policy Evaluation of Tennessee's Tax Reform Act of 2002 with Emphasis on Fairness to the Poor (Robert F. Parsley), 70 Tenn. L. Rev. 1177 (2003).

NOTES TO DECISIONS

Analysis

1. Constitutionality and Validity.
2. Construction.
3. Purchases from Licensed Manufacturers or Importers.

1. Constitutionality and Validity.

This section did not impose a burden on interstate commerce merely because a small percentage of the products of a company paying the tax was shipped out of state. Lindsey v. William Gerst Brewing Co., 168 Tenn. 62, 73 S.W.2d 703, 1934 Tenn. LEXIS 20 (1934).

This section did not violate U.S. Const., amend. 18 or the federal statutes thereunder. Lindsey v. William Gerst Brewing Co., 168 Tenn. 62, 73 S.W.2d 703, 1934 Tenn. LEXIS 20 (1934).

This section, imposing a privilege tax upon the manufacture of beer, was not rendered invalid by the National Recovery Act. Lindsey v. William Gerst Brewing Co., 168 Tenn. 62, 73 S.W.2d 703, 1934 Tenn. LEXIS 20 (1934).

2. Construction.

This section is not limited to those who both manufacture and sell because the word "or" was not used in the caption of the original act in reciting the things regulated. Lindsey v. William Gerst Brewing Co., 168 Tenn. 62, 73 S.W.2d 703, 1934 Tenn. LEXIS 20 (1934).

3. Purchases from Licensed Manufacturers or Importers.

A determination that wholesale distributors are not required to purchase beer from manufacturers or importers who are licensed to sell

beer in Tennessee would defeat the legislative intent to closely regulate the beer industry. Beer House Distribs., Inc. v. Huddleston, 854 S.W.2d 881, 1992 Tenn. App. LEXIS 1032 (Tenn. Ct. App. 1992).

57-5-202. Commissioner of revenue — Supervision and collection of tax — Enforcement of law.

(a) The supervision and collection of the tax imposed in § 57-5-201 is under the direction of the commissioner of revenue. The commissioner shall expend so much of four percent (4%) of the amount received thereunder each year as may be necessary to defray the expenses including clerical and mechanical help and transportation arising out of the administration of this chapter.

(b) No employee of the commissioner shall, while so employed, be interested, directly or indirectly, in the vending, storing, distributing and/or manufacturing of such beer and/or any other beverage under the penalty of dismissal from office and of five hundred dollars ($500) fine, to be recovered by indictment or presentment.

(c) The police and penal provisions of this chapter shall be enforced by members of the state highway patrol and all sheriffs, deputy sheriffs and police officers of the state and its political subdivisions. Such officers, along with inspectors, agents, representatives or officers appointed by the commissioner, shall be charged with the enforcement of the revenue provisions of this chapter. Duly authorized representatives of the department, in the discretion of the commissioner, are authorized and empowered to make arrests for violation of the revenue provisions of this chapter while on active duty engaged in enforcing the revenue provisions of this chapter.

History.

Acts 1933, ch. 69, § 3; 1943, ch. 53, § 4; C. Supp. 1950, § 1191.3; impl. am. Acts 1959, ch. 9, § 14; Acts 1969, ch. 160, § 3; 1969, ch. 319, §§ 3, 4; 1970, ch. 456, § 1; 1970, ch. 496, § 1; 1970, ch. 578, § 1; 1970, ch. 588, §§ 1, 2; 1971, ch. 53, §§ 1-3; 1971, ch. 231, §§ 1, 2; 1972, ch. 584, § 1; 1973, ch. 389, § 1; 1974, ch. 631, §§ 1, 2; Private Acts 1976, ch. 242, § 1; Private Acts 1976, ch. 293; Acts 1977, ch. 239, § 4; T.C.A., (orig. ed.), § 57-214; Acts 1982, ch. 881, § 1; 1991, ch. 9, § 7; 1992, ch. 973, § 5; Private Acts 1994, ch. 191, § 4; Acts 1996, ch. 553, § 4; 1996, ch. 693, § 1; 1996, ch. 753, § 4.

Compiler's Notes.

Acts 1996, ch. 553, § 4 and Acts 1996, ch. 753, § 4 purported to amend the table of populations in (c)(2); however, (c)(2) was previously deleted by Acts 1996, ch. 693, § 1.

Cross-References.

Constables, counties in which office abolished, § 8-10-101.

57-5-203. Payment of tax money — Deadline.

The tax imposed in § 57-5-201 shall be paid to the department of revenue on or before the twentieth day of the month following the month in which it accrues.

History.

Acts 1933, ch. 69, § 4; 1941, ch. 52, § 1; C. Supp. 1950, § 1191.14; impl. am. Acts 1959, ch. 9, § 14; Acts 1972, ch. 448, § 2; 1979, ch. 202, § 1; T.C.A. (orig. ed.), § 57-215; Acts 1980, ch. 885, § 6; 1988, ch. 526, § 15.

Compiler's Notes.

Acts 1988, ch. 526, § 45 provided that the amendment by that act shall apply to all assessments of penalty made on or after January 1, 1989.

57-5-204. Default in payment of state privilege taxes — Cancellation of certificate.

If any such person shall at any time make default in the payment of the state privilege taxes levied under provisions hereof, the commissioner shall send by registered mail, with return receipt requested, written notice and demand for payment of such delinquent tax, showing the amount thereof due and unpaid, to the surety or sureties on the bond, at the address shown thereon or to the last known address, and if the delinquent tax and all interest and penalties legally due thereon shall not be paid within ten (10) days after the mailing of such notice, the commissioner shall cancel the certificate described under § 57-5-102 and proceed against the delinquent under §§ 29-3-112 and 29-3-113 and the commissioner is authorized and empowered, and it shall be the commissioner's duty, to issue a distress warrant for the collection of all delinquent state privilege taxes due under the provisions hereof, with interest and penalty in the sum of ten percent (10%).

History.

Acts 1933, ch. 69, § 7; C. Supp. 1950, § 1191.7; impl. am. Acts 1959, ch. 9, § 14; T.C.A. (orig. ed.), § 57-216.

Cross-References.

Certified mail in lieu of registered mail, § 1-3-111.

57-5-205. Distribution of state privilege tax — Special census by municipality or county.

The state privilege tax collected under §§ 57-5-201 — 57-5-204 shall be paid into the state treasury and shall be divided as follows:

(1) From the proceeds of the amount so collected, ten and five hundredths percent (10.05%) shall be paid to the several counties equally to be used by them for general purposes, ten and five hundredths percent (10.05%) shall be divided between the existing incorporated municipalities according to population to be used by them for general purposes, and forty-one hundredths percent (0.41%) shall be reserved and transferred to the department of mental health and substance abuse services to assist municipalities and counties in carrying out the Comprehensive Alcohol and Drug Treatment Act of 1973, compiled as title 33, chapter 10; title 39, chapter 17, part 4; §§ 53-11-408 and 57-3-306; and this section. Any municipality or county shall have the right to take not more than four (4) special censuses at its own expense at any time during the interim between the regular decennial federal census. Such right shall include the current decennium. Any such census shall be taken by the federal bureau of the census, or in a manner directed by and satisfactory to the department of economic and community development. The population of the municipality or county shall be revised in accordance with the special census for purposes of distribution of such funds, effective on July 1, following the certification of the census results by the federal bureau of the census, or the department of economic and community development to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective July 1, following certification; and

(2) The remainder of the tax collected under this section shall become a part of the general fund of the state.

History.

Acts 1933, ch. 69, § 11; 1937, ch. 88, § 2; 1947, ch. 109, § 2; mod. C. Supp. 1950, § 1191.15; Acts 1957, ch. 368, § 1; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; Acts 1973, ch. 295, § 19; 1974, ch. 516, § 1; impl. am. Acts 1975, ch. 248, § 1; Acts 1978, ch. 497, § 2; T.C.A. (orig. ed.), § 57-217; Acts 1981, ch. 307, § 2; 1996, ch. 675, § 66; 2000, ch. 947, § 6; 2003, ch. 355, § 20; 2005, ch. 500, § 3; 2006, ch. 989, § 8; 2009, ch. 186, § 39; 2010, ch. 1100, § 98; 2011, ch. 350, § 2; 2011, ch. 509, § 5; 2012, ch. 575, § 1.

Compiler's Notes.

Acts 2003, ch. 355, § 66 provided that no expenditure of public funds pursuant to the act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

Acts 2006, ch. 989, § 17 provided that the act shall apply to funds remitted to the department of revenue on or after August 1, 2006.

Acts 2010, ch. 1100, § 153 provided that the commissioner of mental health and developmental disabilities, the commissioner of mental health, the commissioner of intellectual and developmental disabilities, and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of the act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Cross-References.

Special census by counties, § 9-16-101.

State funding for litter abatement, § 57-5-201.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 10.

Attorney General Opinions.

The state can probably continue to distribute state-shared taxes even if the general assembly does not enact a general appropriations act, OAG 00-083 (5/4/00).

57-5-206. Records — Reports to commissioner of revenue — Rules and regulations.

(a) Every person, firm, corporation, joint-stock company, syndicate or association in this state engaged in the storage, sale, distribution by sale or gift and/or manufacture in this state of such beer and/or other beverage shall keep invoices and all other memoranda fully descriptive thereof, and shall permit the commissioner or the commissioner's authorized agents, representatives or employees to inspect, at any time during the business hours of the day, all such articles, containers, packages, invoices, books, papers and memoranda as may be deemed necessary in the opinion of the commissioner, or the commissioner's authorized agent, representative or employee, in ascertaining whether or not the state privilege tax levied under §§ 57-5-201 — 57-5-203 has been paid or in determining the amount of such tax as may be due.

(b) The original bill of sale or invoice or a digital copy thereof shall be kept by the wholesaler for at least two (2) years and the duplicate bill of sale or invoice shall be retained by the retailer for at least two (2) years, subject to inspection by the department or the county, municipal or metropolitan government involved.

(c) The commissioner shall have the power to require any person engaged in the storage, sale, distribution by sale or gift, and/or manufacture, in this state, of such beer and/or any other such beverages, as described above, to furnish any reports, statements or information, under oath, which may be deemed, in the opinion of the commissioner, necessary for the purpose of enforcing a compliance herewith.

(d) The commissioner is authorized and has the duty to make rules and regulations necessary, in the commissioner's opinion, to effectuate the purposes and carry out the provisions hereof, which rules and regulations shall have the force and effect of law if not in conflict with express statutory provision.

History.
Acts 1933, ch. 69, § 8; C. Supp. 1950, § 1191.8; impl. am. Acts 1959, ch. 9, § 14; Acts 1971, ch. 21, § 1; T.C.A. (orig. ed.), § 57-218; Acts 1986, ch. 525, § 1; 2012, ch. 657, § 10.

Law Reviews.
An Examination of The Tennessee Law of Administrative Procedure (George Street Boone), 1 Vand. L. Rev. 339.

57-5-207. Failure to keep records or make reports — Refusal to permit examination of articles used to measure tax — Penalty.

(a) The failure of any person, firm, corporation, joint-stock company, syndicate or association required to pay the state privilege taxes levied hereby, to preserve the invoices or memoranda required by § 57-5-206, or to permit the inspection and examination of such containers, packages, or articles used as the measure of the tax, and/or invoices, books, papers and memoranda at the request of the commissioner or the commissioner's authorized agent, representative or employee, or the failure of any such person to make or furnish any report which the commissioner is authorized to require when demanded by the commissioner, is a violation hereof.

(b) Any person, firm, corporation, joint-stock company, syndicate or association violating this section is guilty of a Class C misdemeanor.

History.
Acts 1933, ch. 69, § 9; C. Supp. 1950, § 1191.9; impl. am. Acts 1959, ch. 9, § 14; T.C.A. (orig. ed.), § 57-219; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

57-5-208. Tax exemption for armed forces facilities.

(a) The state tax on beer and ale shall not be applicable to beer and ale sold for consumption within the geographical boundaries of a fort, base, camp or post of the armed forces of the United States, post exchanges, ship service stores, commissaries and messes operated by the United States armed forces.

(b) The exemption of the tax herein made shall be effectuated by the department of revenue allowing wholesalers and breweries, duly licensed in Tennessee, credit for taxes paid on beer or ale sold to post exchanges, ship service stores, commissaries and messes operated and controlled by the United States armed forces, and which are instrumentalities of the government of the United States.

(c) Such credit shall be allowed only upon application made therefor to the department by the wholesaler or brewery delivering beer or ale and upon a showing, by copy of the invoice with the signature of the officer in charge of such post exchange, ship service store, commissary or mess certifying that the beer or ale was sold to and delivered to the post exchange, ship service store, commissary or mess by such Tennessee wholesaler or brewery. In addition, the application shall be supported by such other evidence as the commissioner may by regulation require.

History.
Acts 1951, ch. 21, § 1 (Williams, § 1191.21); impl. am. Acts 1959, ch. 9, § 14; T.C.A. (orig. ed.), § 57-220.

PART 3

PROHIBITED ACTS

57-5-301. Sales to minors or intoxicated persons prohibited — Employment of certain offenders prohibited — Hours of sale and consumption — Loitering by minors — Possession by minors unlawful — Signs on vendors' premises.

(a)(1) A permit holder engaging in the business regulated hereunder or any employee thereof shall not make or permit to be made any sales to minors or persons visibly intoxicated. Prior to making a sale of beer for off-premise consumption, the adult consumer must present to the permit holder, or any employee of the permit holder, a valid, government-issued document, such as a driver's license, or other form of identification deemed acceptable to the permit holder, that includes the photograph and birth date of the adult consumer attempting to make a beer purchase. Persons exempt under state law from the requirement of having a photo identification shall present identification that is acceptable to the permit holder. The permit holder or employee shall make a determination from the information presented whether the purchaser is an adult. In addition to the prohibition of making a sale to a minor, no sale of beer for off-premises consumption shall be made to a person who does not present such a document or other form of identification to the permit holder or any employee of the permit holder; however, it is an exception to any criminal punishment or adverse administrative action, including license suspension or revocation, as provided for a violation of this section if the sale was made to a person who is or reasonably appears to be over fifty (50) years of age and who failed to present an acceptable form of identification. Responsible vendors shall post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underage persons. The signs shall be not less than eight and one-half inches by eleven inches (8½″ x 11″), and contain the following language: STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER. Neither the person engaging in such business nor persons employed by that person shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture and transportation of intoxicating liquor or any crime involving moral turpitude within the last ten (10) years.

(2) A violation of subdivision (a)(1) is a Class A misdemeanor.

(b)(1) No alcoholic beverage within the scope hereof shall be sold between twelve o'clock midnight (12:00) and six o'clock a.m. (6:00 a.m.). No such beverage shall be sold between twelve o'clock midnight (12:00) on Saturday and eleven fifty-nine o'clock p.m. (11:59 p.m.) on Sunday. No such beverage shall be consumed, or opened for consumption, on or about any premises licensed hereunder, in either bottle, glass, or other container, after twelve fifteen o'clock a.m. (12:15 a.m.). Any county by resolution of the governing body may extend the hours for the sale of beer; provided, however, that the hours for the sale of beer in "clubs" as defined in § 57-4-102, shall conform to those hours for the sale of liquor by the drink as provided in chapter 4 of this title.

(2) A violation of subdivision (b)(1) is a Class C misdemeanor.

(3) This subsection (b) shall not affect the power of governing bodies of municipal corporations or of Class B counties by ordinance to fix the hours when such beverages may be sold within the incorporated limits of such respective municipalities or within the general services districts of Class B counties outside the limits of any smaller city as defined in § 7-1-101. Municipal corporations may authorize the sale of such beverages in their respective corporate limits on Sundays or at such hours as may be prescribed by ordinance. Class B counties may authorize the sale of such beverages on Sundays in their respective general services districts outside their urban services districts and outside the limits of any smaller city or cities or in their respective urban services districts or in both or at such hours as may be prescribed by ordinance.

(4) The governing body of any county that has adopted liquor by the drink, as provided for in chapter 4 of this title, may fix the hours for the sale of beer within the county (that part of the county outside of incorporated municipalities). This subdivision (b)(4) shall not affect business establishments selling liquor by the drink and malt beverages as authorized by chapter 4 of this title.

(5)(A) In any county in which an incorporated municipality has authorized the sale of liquor by the drink, as provided for in chapter 4 of this title, the hours for the sale of beer as defined in § 57-6-102, in that part of the county outside of incorporated municipalities and in all of its municipalities which have authorized the sale of liquor by the drink, shall be the same as the hours authorized by the rules and regulations promulgated by the alcoholic beverage commission for establishments selling liquor by the drink; provided, however, that the county legislative body of any such county and the governing body of each municipality within the county which has authorized the sale of liquor by the drink shall have the authority to extend the hours for the sale of beer as defined in § 57-6-102, within the territorial jurisdiction of each governing body. This subdivision (b)(5)(A) shall not apply to counties and municipalities that have legalized the sale of liquor by the drink by a county-wide referendum.

(B) In any jurisdiction that has elected Tennessee River resort district status pursuant to § 67-6-103(a)(3)(F) and is considered a Tennessee River resort district for purposes of chapter 4, part 1 of this title, the hours for the sale of beer within the boundaries of any such resort district shall not be less than the hours authorized for establishments selling liquor or wine for on-premises consumption.

(c) It is unlawful for the management of any place where any beverage licensed hereunder is sold to allow any minor to loiter about such place of business, and the burden of ascertaining the age of minor customers shall be upon the owner or operator of such place of business.

(d)(1)(A) It is unlawful and punishable as provided in § 57-5-303, for any minor to purchase or attempt to purchase any such beverage.

(B)(i) In addition to any criminal penalty established in this section, a court in which a person younger than twenty-one (21) years of age but eighteen (18) years of age or older is convicted of the purchase or

attempt to purchase or possession of beer in violation of this section shall prepare and send to the department of safety, driver control division, within five (5) working days of the conviction an order of denial of driving privileges for the offender.

(ii) The court and the department of safety shall follow the same procedures and utilize the same sanctions and costs for an offender younger than twenty-one (21) years of age but eighteen (18) years of age or older as provided in title 55, chapter 10, part 7, for offenders younger than eighteen (18) years of age but thirteen (13) years of age or older.

(2) Any person who purchases any such beverage for or on behalf of a person under twenty-one (21) years of age commits a Class A misdemeanor and, in addition to the punishment authorized by § 40-35-111, shall be punished pursuant to § 39-15-404.

(3) Any person under twenty-one (21) years of age who knowingly makes a false statement or exhibits false identification to the effect that the person is twenty-one (21) years of age or older to any person engaged in the sale of alcoholic beverages licensed hereunder for the purpose of purchasing or obtaining the same is guilty of a misdemeanor. In addition to any criminal penalty established by this subdivision (d)(3), a court in which a person younger than twenty-one (21) years of age but eighteen (18) years of age or older is convicted under this subdivision (d)(3) of a second or subsequent offense shall prepare and send to the department of safety, driver control division, within five (5) working days of the conviction, an order of denial of driving privileges for the offender for a period not to exceed one (1) year. The offender may apply to the court for a restricted driver license. The judge shall order the issuance of a restricted motor vehicle operator's license, in accordance with § 55-50-502. The court and the department shall follow the same procedures and utilize the same costs for a person younger than twenty-one (21) years of age but eighteen (18) years of age or older as provided in title 55, chapter 10, part 7, for offenders younger than eighteen (18) years of age but thirteen (13) years of age or older.

(A) If the person violating this subdivision (d)(3) is less than eighteen (18) years of age, the person shall be punished by a fine of not less than fifty ($50.00) nor more than two hundred fifty dollars ($250) and not less than twenty (20) hours of community service work, which fine or penalty shall not be suspended or waived. The fine imposed by this subdivision (d)(3)(A) shall apply regardless of whether the violator cooperates with law enforcement officers by telling them the place the alcohol was purchased or obtained or from whom it was purchased or obtained.

(B) If the person violating this subdivision (d)(3) is eighteen (18) years of age or older but less than twenty-one (21) years of age, the person shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500) or by imprisonment in the local jail or workhouse for not less than five (5) days nor more than thirty (30) days. The penalties imposed by this subdivision (d)(3)(B) shall apply regardless of whether the violator cooperates with law enforcement officers by telling them the place the alcohol was purchased or obtained or from whom it was purchased or obtained.

(e)(1) It is unlawful for any person under twenty-one (21) years of age to have in the person's possession beer for any purpose, and it is unlawful for any such minor to transport beer for any purpose except the same be in the course of employment.

(2) A violation of subdivision (e)(1) is a Class A misdemeanor.

(3) Any person under twenty-one (21) years of age found to have violated subdivision (e)(1) shall, regardless of the final disposition of such violation, have the right to have the records, as defined in § 40-32-101, of such violation destroyed after the passage of six (6) months from the date of the violation. Such destruction shall occur upon motion of the person to the court which heard the violation and shall be without cost to such person.

(f) Vendors shall post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underage persons. The signs shall be not less than eight and one-half inches by five and one-half inches (8½″ x 5½″), and shall contain the following language: IF YOU AREN'T 21 AND ARE IN POSSESSION OF BEER, YOU COULD LOSE YOUR DRIVER LICENSE.

History.

Acts 1933, ch. 69, § 9a; 1935, ch. 170, § 3; 1943, ch. 53, §§ 2, 5; C. Supp. 1950, § 1191.10; Acts 1961, ch. 170, § 1; 1963, ch. 222, § 1; 1965, ch. 321, § 5; 1970, ch. 353, § 1; 1972, ch. 555, § 1; 1978, ch. 537, § 1; impl. am. Acts 1978, ch. 934, §§ 7, 36; impl. am. Acts 1979, ch. 413, §§ 3, 4; T.C.A. (orig. ed.), § 57-221; Acts 1982, ch. 877, § 4; 1984, ch. 1006, §§ 4, 10, 18; 1985, ch. 321, §§ 2, 3; 1985, ch. 375, § 5; 1986, ch. 758, § 1; 1986, ch. 788, § 3; 1989, ch. 591, §§ 111, 113; 1991, ch. 473, § 4; 1996, ch. 641, § 5; 1997, ch. 423, §§ 1-3; 1998, ch. 780, § 1; 2006, ch. 864, § 12; 2006, ch. 900, § 2; 2006, ch. 986, §§ 3, 4, 6; 2008, ch. 877, §§ 1, 3; 2009, ch. 208, § 2; 2011, ch. 27, §§ 2, 3.

Code Commission Notes. Portions of this section have been rewritten by the executive secretary to the Tennessee code commission to implement Acts 1989, ch. 591, § 111, effective November 1, 1989, which requested that the executive secretary amend this section by deleting the penalty provision and inserting language to indicate violation of the section is a Class A misdemeanor.

Compiler's Notes.

The misdemeanor penalty provisions in subsections (c) and (d) may have been affected by the Criminal Sentencing Reform Act of 1989. See §§ 39-11-114, 40-35-110, 40-35-111.

For similar provisions relative to purchases and possession by minors, see § 57-4-203 and accompanying notes.

Acts 2006, ch. 864, § 12, provided that the amendment by the act, which added the second through sixth sentences of subdivision (a)(1), shall sunset on July 1, 2008. Acts 2008, ch 877 § 1 provided that Acts 2006, ch. 864, § 12 is amended by deleting the last sentence in § 12 in its entirety which reads: "The provisions of this section will sunset July 1, 2008."

Cross-References.

Alcohol-related injuries, title 57, ch. 10.

Eighteen-year-olds, legal responsibility, alcoholic beverage restrictions on persons under 21, § 1-3-113.

False representations by minors, §§ 57-3-412, 57-4-203.

Juvenile alcohol abuse, title 33, ch. 10, part 3.

"Minor" defined, § 1-3-105.

Penalties for Class A and Class C misdemeanors, § 40-35-111.

Tennessee Responsible Vendor Act of 2006, title 57, ch. 5, part 6.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 4, 5, 9, 12, 21.

Law Reviews.

One Too Many: Sellers, Servers Must Know "How Much Is Too Much" to Avoid Alcohol Related Injuries (Mike Faulk), 43 Tenn. B.J. 12 (2007).

Selected Tennessee Legislation of 1986, 54 Tenn. L. Rev. 457 (1987).

Attorney General Opinions.

Destruction of records—juvenile court—alcohol violations by a minor, OAG 92-68 (12/28/92).

Purchasing beverages of 5% alcohol or less for person under 21, OAG 94-051 (4/6/94).

No driver's license suspension for underage consumers of alcohol, OAG 94-137 (11/21/94).

Conviction of driving under the influence not bar to employment, OAG 95-037 (4/18/95).

Applicability of local beer permit ordinance to liquor-by-the-drink license holders, OAG 99-098 (4/30/99).

Constitutionality of subdivision (b)(5), relating to hours for sale of beer in counties containing municipalities that have adopted liquor-by-the-drink, OAG 99-187 (9/22/99).

In a county that has not approved liquor by the drink by means of a county-wide referendum, but in which several municipalities have approved liquor by the drink, the hours for the sale of beer in areas of the county outside of incorporated municipalities and within those municipalities that have adopted liquor by the drink will be those set for the sale of liquor by the drink by the alcoholic beverage commission; thus, beer sales in these areas of the county may begin as early as 10:00 a.m. on Sundays, and this starting time for beer sales is applicable to sales by stores for off-premises consumption, as well as sales for consumption on the premises, OAG 02-23 (2/27/02).

In a county that has not approved liquor by the drink by means of a county-wide referendum, but in which several municipalities have approved liquor by the drink, and in which one incorporated municipality that has approved liquor by the drink decides by resolution to "opt out" of the expanded time for Sunday liquor-by-the-drink sales in order to return to the previous starting time of 12:00 noon, the hours for the sale of beer in areas of the county outside of incorporated municipalities and within those other municipalities that have adopted liquor by the drink will be those set for the sale of liquor by the drink by the alcoholic beverage commission, and, therefore, beer sales in these areas of the county may begin as early as 10:00 a.m. on Sundays, OAG 02-23 (2/27/02).

In counties that have not approved liquor by the drink by means of a county-wide referendum, but contain at least one municipality that has approved liquor by the drink by municipal referendum, the hours for the sale of beer in areas of the county outside of incorporated municipalities, and within those municipalities that allow liquor by the drink, will be those set by the alcoholic beverage commission for the sale of liquor by the drink; however, the governing body of a county or incorporated municipality may extend the hours for beer sales beyond these times in their respective jurisdictions, OAG 02-033 (3/15/02).

Violations by minors, OAG 07-104 (7/12/07).

Revocation and suspension of beer permits, OAG 07-104 (7/12/07).

Hours for the sale of beer in a municipality located within a Tennessee River resort district. OAG 10-92, 2010 Tenn. AG LEXIS 98 (8/17/10).

NOTES TO DECISIONS

Analysis

1. Construction.
2. Hours of Sale.
3. Minors Loitering About Premises.
4. Sufficiency of Indictment or Presentment.
5. Sunday Sales.
6. Public Policy.
7. Sales to Minors.
8. Civil Actions.

1. Construction.

Although this section is somewhat ambiguous it was the intent of the legislature that the acts enumerated herein be subject to fine and imprisonment. Richmond v. State, 171 Tenn. 1, 100 S.W.2d 1, 1936 Tenn. LEXIS 52 (1936).

There is nothing in this chapter to constitute notice that a violation of the liquor laws of the state would operate as a revocation of a licensee's right to sell beer. Richmond v. State, 171 Tenn. 1, 100 S.W.2d 1, 1936 Tenn. LEXIS 52 (1936).

2. Hours of Sale.

The 1943 amendment made an exception in favor of municipal corporations, conferring power upon them to vary the statutory hours of sale, and this exception precludes any such exception in favor of counties and county beer commissions. Perry v. Sevier County Beer Com., 181 Tenn. 696, 184 S.W.2d 32, 1944 Tenn. LEXIS 293 (1944).

The legislature having made the sale of beer legal within certain hours, the counties and the county beer commissions are not authorized to vary or further restrict these hours. Perry v. Sevier County Beer Com., 181 Tenn. 696, 184 S.W.2d 32, 1944 Tenn. LEXIS 293 (1944).

Where city ordinance regulated hours of sale of beer, but was silent with respect to hours of on premises consumption, provision of T.C.A. § 57-5-301 prohibiting beer licensees from allowing consumption of beer on premises after specified time applied to any licensee located within city. Claiborne Country Club v. City of Tazewell, 872 S.W.2d 685, 1993 Tenn. App. LEXIS 601 (Tenn. Ct. App. 1993).

3. Minors Loitering About Premises.

Defendant was guilty of allowing minors to loiter around beer place where evidence showed that minors drank beer, danced, and were observed in beer place. Hopper v. State, 194 Tenn. 600, 253 S.W.2d 765, 1952 Tenn. LEXIS 427 (1952).

It was duty of court to instruct, when requested, on the legal definition of the term "loiter." McCoy v. State, 3 Tenn. Crim. App. 709, 466 S.W.2d 540, 1971 Tenn. Crim. App. LEXIS 388 (Tenn. Crim. App. 1971).

4. Sufficiency of Indictment or Presentment.

Where presentment charged that defendant having been convicted within the last 10 years of violation of the law against possession and transportation of intoxicating liquors in Tennessee did unlawfully sell beer, but where the

presentment did not state any facts or particulars that would constitute an illegal sale of beer, such presentment did not charge an indictable offense. Richmond v. State, 171 Tenn. 1, 100 S.W.2d 1, 1936 Tenn. LEXIS 52 (1936).

5. Sunday Sales.

Provision of this section prohibiting Sunday sales was not for purpose of protecting travelers on highways from drunken driving on Sunday and person who made such sales was not thereby liable for injuries resulting from operation of motor vehicle by person to whom he made such sales. Mitchell v. Ketner, 54 Tenn. App. 656, 393 S.W.2d 755, 1964 Tenn. App. LEXIS 165 (Tenn. Ct. App. 1964), superseded by statute as stated in, Worley v. Weigel's, — S.W.2d —, 1994 Tenn. App. LEXIS 726 (Tenn. Ct. App. Dec. 14, 1994).

City ordinance prohibiting the sale of beer on Sunday did not violate the constitutional prohibition against religious preferences or due process. Martin v. Beer Bd., 908 S.W.2d 941, 1995 Tenn. App. LEXIS 271 (Tenn. Ct. App. 1995).

6. Public Policy.

The public policy of this state is to prevent minors from purchasing, possessing, or imbibing alcoholic beverages. Brookins v. Round Table, Inc., 624 S.W.2d 547, 1981 Tenn. LEXIS 503 (Tenn. 1981), superseded by statute as stated in, Biscan v. Brown, — S.W.3d —, 2003 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 15, 2003).

7. Sales to Minors.

A cause of action exists against a vendor who sells alcoholic beverages to a minor, where harm results therefrom. Brookins v. Round Table, Inc., 624 S.W.2d 547, 1981 Tenn. LEXIS 503 (Tenn. 1981), superseded by statute as stated in, Biscan v. Brown, — S.W.3d —, 2003 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 15, 2003).

It is no defense that a minor purchasing beer violates the law and is guilty of a misdemeanor. Medley v. Maryville City Beer Bd., 726 S.W.2d 891, 1987 Tenn. LEXIS 892 (Tenn. 1987).

The doctrine of entrapment has been held not to be established when the police did no more than to employ a minor as a decoy and to place him under surveillance while he requested the sale of an intoxicant. Medley v. Maryville City Beer Bd., 726 S.W.2d 891, 1987 Tenn. LEXIS 892 (Tenn. 1987).

8. Civil Actions.

A person who has the capacity and judgment to act responsibly in his own behalf cannot recover damages where he actively contributes to the intoxication of another and the intoxication is the proximate cause of the injury that is the subject of the legal action. Brookins v. Round Table, Inc., 624 S.W.2d 547, 1981 Tenn. LEXIS 503 (Tenn. 1981), superseded by statute as stated in, Biscan v. Brown, — S.W.3d —, 2003 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 15, 2003).

Sections 57-10-101 and 57-10-102 governing the liability of sellers of alcohol, rather than the duties imposed by criminal statutes, determine the civil liability of the seller. Worley v. Weigel's, Inc., 919 S.W.2d 589, 1996 Tenn. LEXIS 188 (Tenn. 1996), rehearing denied, — S.W.2d —, 1996 Tenn. LEXIS 255 (Tenn. 1996).

57-5-302. [Reserved.]

57-5-303. Violation of law, rule or regulation — Penalties.

(a) Any violation of this chapter or rule or regulation of the commissioner of revenue or the violations of any rule or regulation of a county legislative body, metropolitan council or city legislative body relative to the conducting of the beer or like beverage business as defined in § 57-5-101 is a Class C misdemeanor where the penalty is not otherwise fixed.

(b) A violation of this section involving either unlawful possession or illegal transportation, or both, of over one hundred (100) cases of twenty-four (24) twelve ounce (12 oz.) cans of beer or other light alcoholic beverage, or the equivalent thereof with respect to quantity or the kinds of containers, is a Class E felony.

(c) Upon the second conviction of any person engaging in a business regulated under this chapter of making, or permitting to be made, any sale of alcoholic beverages, beer or wine to a person under twenty-one (21) years of age in violation of this chapter, such person is guilty of a Class E felony. In addition, upon the second such conviction, the permit or license of such person

shall be automatically and permanently revoked regardless of any other punishment actually imposed.

(d) Each violation of this chapter shall constitute a separate and distinct offense.

History.

Acts 1933, ch. 69, § 13; C. Supp. 1950, § 1191.16 (Williams, § 1191.17); Acts 1965, ch. 321, § 6; 1969, ch. 299, § 2; 1972, ch. 448, § 3; 1979, ch. 256, § 2; impl. am. Acts 1979, ch. 413, §§ 1, 2; T.C.A. (orig. ed.), § 57-223; Acts 1984, ch. 1006, § 5; 1989, ch. 591, §§ 64, 65.

Cross-References.

Age of majority for purposes of purchasing, consuming, transporting alcoholic beverages, §§ 1-3-105, 1-3-113.

Eighteen-year-olds, legal responsibility, alcoholic beverage restrictions on persons under 21, § 1-3-113.

Juvenile alcohol abuse, title 33, ch. 10, part 3.

Penalty for Class C misdemeanor, § 40-35-111.

Penalty for Class E felony, § 40-35-111.

Purchase of beverages from unauthorized seller, penalty, § 57-5-406.

Transportation of beer and light alcoholic beverages, unlawful acts, §§ 57-5-406, 57-5-414, 57-5-416.

Attorney General Opinions.

Purchasing beverages of 5% alcohol or less for person under 21, OAG 94-051 (4/6/94).

A vendor who is caught selling beer to a minor is subject to criminal penalties imposed by the local criminal court ranging from a Class A misdemeanor to a Class E felony and is also subject to the suspension or revocation of the permit imposed by the local beer board, OAG 01-062 (4/20/01).

NOTES TO DECISIONS

1. Civil Actions.

A cause of action exists against a vendor who sells alcoholic beverages to a minor, where harm results therefrom. Brookins v. Round Table, Inc., 624 S.W.2d 547, 1981 Tenn. LEXIS 503 (Tenn. 1981), superseded by statute as stated in, Biscan v. Brown, — S.W.3d —, 2003 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 15, 2003).

A person, who has the capacity and judgment to act responsibly in his own behalf cannot recover damages where he actively contributes to the intoxication of another and the intoxication is the proximate cause of the injury that is the subject of the legal action. Brookins v. Round Table, Inc., 624 S.W.2d 547, 1981 Tenn. LEXIS 503 (Tenn. 1981), superseded by statute as stated in, Biscan v. Brown, — S.W.3d —, 2003 Tenn. App. LEXIS 875 (Tenn. Ct. App. Dec. 15, 2003).

57-5-304. Outdoor advertisement at retail beer establishments.

(a) No outdoor sign, advertisement or display that advertises beer may be erected or maintained on the property on which a retail beer establishment is located other than one (1) sign, advertisement or display which makes reference to the fact that the establishment sells beer but does not use brand names, pictures, numbers, prices or diagrams relating to beer.

(b) This section shall not apply to any sign, advertisement or display erected or maintained by or at the request of a temporary beer permittee or to any sports arena, stadium or entertainment complex.

History.

Acts 1988, ch. 487, § 1; 1996, ch. 641, § 6.

PART 4

TRANSPORTATION

57-5-401. Transportation of beer and light alcoholic beverages into state — Documents required — Carrier's tax liability.

(a) Any person engaged in transporting any beer and/or other such beverages from any point outside of this state to any point within this state shall possess during the entire time engaged in transporting such beverages in this state an invoice, bill of sale, or bill of lading, showing the true name and address of the consignor, the true name and address of the licensed brewery, wholesaler or distributor to whom such beverages are to be delivered, and the quantity of such beverages, except a common carrier maintaining a permanent office within this state where complete records of all beer and/or other such beverages transported from without this state are kept and open to inspection by the commissioner or the commissioner's duly authorized agent at all reasonable times.

(b) When any common carrier transporting beer as defined in § 57-5-101(b) to a point within this state or any insurance company insuring such products comes into possession of such products by virtue of the same being damaged or otherwise unaccepted by the consignee of such product, such common carrier or insurance company shall become liable for the tax imposed under this chapter, unless proof deemed satisfactory to the commissioner is furnished to the commissioner by such carrier or insurance company showing that such products have been destroyed or shipped to a point without this state and, therefore, have not been sold or consumed in this state. The imposition of liability for the tax under the circumstances as hereinabove stated shall not be construed as authorizing the sale of such products in this state by either common carriers or insurance companies unless otherwise licensed to do so.

History.
Acts 1969, ch. 299, § 3; 1973, ch. 6, § 2; T.C.A., § 57-224; Acts 1990, ch. 617, §§ 2, 3; 2014, ch. 861, § 11.

Cross-References.
Beer wholesaler-supplier relations, title 57, ch. 5, part 5.

Interstate shipments by roadway or other means, § 57-5-408.

57-5-402. Unauthorized change of consignee or place of delivery prohibited.

(a) It is unlawful for any person to present or tender for transportation to any carrier, or to any officer, agent, employee, or other person acting or assuming to act for such carrier, any beer and/or other such beverages for delivery to any person other than the consignee designated by such person offering the same for shipment, or for the purpose of directly or indirectly effecting a delivery thereof to any person not permitted to receive the same as consignee thereof, under this part, or of any rule or regulation of the commissioner, or to any person not the actual bona fide consignee thereof.

(b) It is also unlawful for any person through any such carrier to deliver any

such beverages to any person, or at any point or place other than the person and/or destination designated in the bill of lading or transportation contract therefor, or to accept for transportation and/or delivery any shipment of such beverages knowing that such shipment is intended for any person not permitted to receive the same under this part or any rule or regulation of the commissioner.

History.
Acts 1969, ch. 299, § 3; T.C.A., § 57-225.

Cross-References.
Penalty for violating chapter, § 57-5-303.

57-5-403. [Reserved.]

57-5-404. Intrastate transportation without payment of tax unlawful — Documents required — Prima facie evidence of violation.

(a) It is unlawful for any person to transport from any point within this state to another point within this state any beer and/or other such beverages on which the tax imposed in § 57-5-201 has not been paid, except for immediate delivery to a licensed brewery, wholesaler or distributor in this state.

(b) Any person engaged in transporting any beer and/or other such beverages on which the tax imposed in § 57-5-201 has not been paid from any point within this state to another point within this state shall possess during the entire time engaged in transporting such beverages an invoice, bill of sale or bill of lading showing the true name and address of the consignor, the true name and address of the licensed brewery, wholesaler or distributor to whom such beverages are to be delivered and the quantity of such beverages by character and contents of the containers.

(c) If such person fails to produce an invoice or bill of sale or recorded evidence, or if when produced it fails to comply and accurately disclose such information, the same shall be prima facie evidence of the violation of this chapter.

History.
Acts 1969, ch. 299, § 3; T.C.A., § 57-227.

Cross-References.
Penalty for violating chapter, § 57-5-303.

57-5-405. Documents required by other than common carrier, brewery, wholesaler or distributor making deliveries to customer.

(a) In order to assure that the tax provided herein has been paid, every person who shall possess or transport any such beverages within this state in excess of five gallons (5 gals.) (other than a common carrier or a licensed brewery, wholesaler or distributor engaged in making regular deliveries of beer and/or other such beverages to their customers) shall possess, during the entire time the person is in possession of or is engaged in transporting such beverages within this state, an invoice, bill of sale or bill of lading showing the date of purchase or shipment, the true name and exact address of the seller or consignor and the true name and exact address of the purchaser or consignee. The burden of proof shall be upon the person possessing or transporting any

such beverages to establish to the satisfaction of the collection officers that the invoice, bill of sale or bill of lading possessed by the person and offered as evidence that the tax thereon has been paid does, in fact, relate to the identical beverages then possessed or being transported.

(b) Any property confiscated as contraband solely for failure to have the documents required by this section may be returned upon order of the commissioner, without the necessity of a hearing, upon a showing satisfactory to the department of revenue that taxes imposed by the state of Tennessee upon such items have been paid.

History.
Acts 1969, ch. 299, § 3; 1972, ch. 448, § 4; 1973, ch. 84, § 1; T.C.A., § 57-228.

57-5-406. No purchases authorized from unlicensed seller — Defenses — Shipping, receiving or accepting packages with false or misleading statements unlawful.

(a) No person shall purchase or agree to purchase any beer and/or other such beverages from any person within this state who does not at the time of such purchase hold a license authorizing the seller to sell or agree to sell such beverages to such purchaser. It shall be a matter of defense only that such purchaser did not in good faith know that the seller did not hold a license authorizing the seller to sell or agree to sell beer to the purchaser, and did not have reasonable ground to believe that the seller did not hold such license.

(b) No person shall solicit or receive any order for any such beverages in violation of this part, or give any information of how the same may be obtained in violation of this part.

(c) It is unlawful for any consignee to accept or receive any package containing any beer upon which appears any statement, label, address, superscription, shipping directions, legend or design known to the consignee to be false or misleading, or for any carrier or other person to consign, ship, transport, or deliver any such package, knowing any such statement, label, address, superscription, shipping directions, legend or design to be false or misleading.

(d) It is unlawful for any person to make a false statement for the purpose of obtaining any such beverages to any railroad, express or transportation company or any person engaged in the business of transporting goods, wares, and merchandise for the purpose of obtaining the shipment, transportation or delivery of any beer and/or other such beverages.

History.
Acts 1969, ch. 299, § 3; T.C.A., § 57-229.

Cross-References.
Penalty for violating chapter, § 57-5-303.

57-5-407. Interstate shipments through Tennessee excepted from part.

This part shall not be construed as being applicable to interstate shipments through this state where such shipments are accompanied and supported by proper invoices or bills of lading containing such information as the commissioner may require.

History.
Acts 1969, ch. 299, § 3; T.C.A., § 57-230.

NOTES TO DECISIONS

Analysis

1. In General.
2. Purpose.

1. In General.
T.C.A. § 57-5-407 protects beer shipments which are legitimately in interstate commerce. Beer House Distribs., Inc. v. Huddleston, 854 S.W.2d 881, 1992 Tenn. App. LEXIS 1032 (Tenn. Ct. App. 1992).

2. Purpose.
The purpose of T.C.A. § 57-5-407 is to prevent the unlawful diversion of liquor from interstate commerce into the territory of the State of Tennessee. Beer House Distribs., Inc. v. Huddleston, 854 S.W.2d 881, 1992 Tenn. App. LEXIS 1032 (Tenn. Ct. App. 1992).

57-5-408. Documents required for interstate shipment — Display and inspection.

(a) It is unlawful for any person to transport into this state upon any public roadway or by any means whatever within this state any beer and/or other such beverages from any other state, nation or other territory unless the person accompanying and in charge of such shipment shall have present and available for exhibition such bills of lading, evidence of ownership and/or shipment as the commissioner may by rule or regulation require.

(b) No such person or driver of any vehicle, vessel, or craft shall refuse to exhibit or refuse to permit to be read and/or examined any such bill of lading, evidence of ownership and/or shipment, or refuse to permit examination of the cargo or vehicular contents by an agent or employee of the commissioner or any police officer, highway patrol officer, sheriff, deputy sheriff or duly authorized officer of a municipal corporation within this state or governmental division thereof. Each, any and all of such officers are entitled to demand, examine and/or read the same, and a refusal to produce the documents referred to in this section or voluntarily permit examination of cargo or vehicular contents is a violation of this part.

History.
Acts 1969, ch. 299, § 3; T.C.A., § 57-231.

Cross-References.
Penalty for violating chapter, § 57-5-303.

57-5-409. Contraband — What constitutes — Confiscation.

(a) Any beer as defined in § 57-5-101(b) sold or offered for sale by, or in possession of, a retailer purchased from any person, firm or corporation, except a Tennessee wholesaler or distributor licensed in this state, is declared to be contraband and shall be subject to confiscation by the commissioner or any duly authorized representative, highway patrol officer, sheriff or other peace officer.

(b) Any beer or other beverages described in § 57-5-101 imported into this state, in transit within this state, or in possession of a person or firm within this state not in accordance with any of the requirements of §§ 57-5-104 (except permit requirements on wholesalers in counties or cities in which they do not have an established location or place of business), 57-5-201, 57-5-206, 57-5-207, 57-5-401, 57-5-402, 57-5-404 — 57-5-406, 57-5-408 or 57-5-414 and

the rules and regulations promulgated under them are declared to be contraband, and it, along with any vehicle in which it is being transported which is not a common carrier, may be seized, either with or without a warrant, by the commissioner or any duly authorized representative, highway patrolman, sheriff, or other peace officer. Any beer or other beverages or vehicles so seized shall be delivered promptly to the department for disposition.

(c) Any beer so seized may, in the discretion of the commissioner, be deposited with a duly licensed Tennessee wholesaler or distributor, located nearest to the site of the seizure, engaged in handling the particular brand of beer involved. Such deposit shall be evidenced by a receipt issued to the commissioner by such wholesaler or distributor, stating the quantity and brand name of such beer so deposited. The receipt may subsequently be exchanged with the wholesaler or distributor issuing it for salable beer of the same quantity and brand name by any person or persons who may be entitled thereto or to the proceeds of the sale thereof in accordance with this chapter. Such receipts shall be admissible as evidence in any administrative hearing or any civil or criminal court hearing or trial.

(d) If, incidental to a confiscation of contraband as defined herein, there is discovered any intoxicating liquor deemed to be held or transported illegally within the purview of § 57-3-411, § 57-9-201 or § 57-9-202, the confiscating officer is hereby empowered and required to seize such liquor, notwithstanding the fact that such officer may not otherwise be empowered to take such action under such section. Any intoxicating liquor seized pursuant hereto shall be delivered promptly, as provided by § 57-3-411, § 57-9-201 or § 57-9-202, whichever is appropriate, to the alcoholic beverage commission for sale or disposition as contraband in accordance with chapters 2-4, or 6 of this title, whichever is appropriate.

History.

Acts 1969, ch. 299, § 3; 1970, ch. 388, § 1; 1973, ch. 68, § 3; 1974, ch. 478, § 3; T.C.A., § 57-232; Acts 2014, ch. 861, § 12.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 3, 20.

NOTES TO DECISIONS

Analysis

1. Miranda Rules.
2. Regulations.
3. Search and Seizure.
4. Beer Purchaser from Unlicensed Seller.
5. Contraband Found.

1. Miranda Rules.

The capture of beer and its confiscation as contraband under this section does not involve the constitutional rights protected by *Miranda* rules. Stroupe v. Tidwell, 510 S.W.2d 77, 1974 Tenn. LEXIS 502 (Tenn. 1974).

2. Regulations.

Regulation of department of revenue requiring that interstate shipments of beer and alcoholic beverages of alcoholic content of not more than five percent by weight be accompanied by a bill of lading and that the consignee be licensed either in Tennessee or in the state of destination is a reasonable regulation of transportation of intoxicating liquors across state boundaries. Stroupe v. Tidwell, 510 S.W.2d 77, 1974 Tenn. LEXIS 502 (Tenn. 1974).

3. Search and Seizure.

Where the thing seized is contraband, the right to have it returned is not governed by the law of search and seizure, but by the law of contraband. Stroupe v. Tidwell, 510 S.W.2d 77, 1974 Tenn. LEXIS 502 (Tenn. 1974).

4. Beer Purchaser from Unlicensed Seller.

Section 57-5-201(c) requires wholesale distributors to purchase beer from licensed manufacturers, licensed importers, or licensed wholesalers; accordingly, any beer purchased from a manufacturer who was not authorized to sell beer in Tennessee would constitute contra-

band under T.C.A. § 57-5-409, as well as the vehicle in which it was being transported. Beer House Distribs., Inc. v. Huddleston, 854 S.W.2d 881, 1992 Tenn. App. LEXIS 1032 (Tenn. Ct. App. 1992).

5. Contraband Found.

Truck and beer were contraband. Beer House Distribs., Inc. v. Huddleston, 854 S.W.2d 881, 1992 Tenn. App. LEXIS 1032 (Tenn. Ct. App. 1992).

57-5-410. Notification of seizure — Claims.

(a) Upon confiscation, or as soon thereafter as practicable, written notice shall be given by the department of revenue to the person from whom the confiscation was made and to all others with a legal interest in the property confiscated who are either made known to the department or who, by reasonable examination of public records of titles and liens, should have been discovered. Such written notice shall state: a description of the property confiscated, the reason for confiscation, the method for seeking recovery, the time limit for seeking recovery, and the result of failure to seek or obtain recovery by the designated method. Such notice may be by personal delivery or by mail either of which may be made to the last known address of the interested party.

(b) Any person claiming any property so seized as contraband goods may, within ten (10) days of such notice, and after executing a bond for costs with one (1) or more good and solvent sureties in the sum of two hundred fifty dollars ($250) made payable to the state of Tennessee, or upon executing a pauper's oath as provided by law, file with the commissioner at Nashville a claim in writing requesting a hearing and stating the person's interest in the property seized. The commissioner shall set a date for hearing within ten (10) days from the date the claim is posted or received.

(c) In any hearing convened upon proper petition of an interested party, the initial burden shall be upon the state to show by a preponderance of the evidence that the property in question was of such nature or was used in such manner as to be declared as contraband. Upon meeting this burden, the property shall be forfeited as provided by law unless the claimant shall prove that the claimant is nevertheless qualified under this chapter, or otherwise, to recover the property in question.

(d)(1) Whenever in any proceeding under this section a claim is filed for any vehicle, aircraft or boat seized, as hereinabove provided, the commissioner shall not allow the claim unless and until the claimant proves that:

(A) The claimant has an interest in such vehicle, aircraft or boat, as owner or otherwise, which was acquired in good faith;

(B) The claimant had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of this state relating to beer as defined in § 57-5-101(b); and

(C) If it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or any state relating to beer as defined in § 57-5-101(b) has a right with respect to such vehicle, aircraft or boat, that before such claimant acquired the interest, or such other person acquired the right under such contract or agreement, whichever occurred later, the claimant, claimant's officer or agent, made inquiry and was informed, in answer to the inquiry

at the headquarters of the sheriff, chief of police, principal federal internal revenue officer engaged in the enforcement of the beer laws, or other principal local or federal law enforcement officer of the locality in which such other person acquired the right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

(2) Provided, however, that in the case of a first offense of violating this chapter, and after hearing provided for herein, subdivision (d)(1) may, in the discretion of the commissioner, be waived and claim of owner or lienholder may be honored.

(e) The commissioner may designate a hearing officer from the department to conduct the hearings provided for in this section, who shall make findings of fact, conclusions of law, and proposed orders based thereon. If the commissioner concurs, the commissioner shall issue the order; or the commissioner may, upon review of the record, make such findings, conclusions, and issue such orders as, in the commissioner's discretion, the record justifies.

(f) Pending any proceeding to recover any beer as defined in § 57-5-101(b) and/or any vehicle seized as contraband under this chapter, or pending any appeal of the action taken by the commissioner as a result of any such proceeding, the commissioner may order delivery thereof to any claimant who shall establish the right to immediate possession thereof, and who shall execute, with one (1) or more sureties approved by the commissioner, and deliver to the commissioner, a bond in favor of the state of Tennessee for the payment of a sum double the appraised value thereof as of the time of the seizure. The condition of the bond shall be that the obligors shall pay to the state, through the department, the full value of the goods or property when seized, unless upon a final determination by the commissioner or the courts the property shall be awarded to the claimant. The full value of the goods or property seized shall be determined by the commissioner and such determination shall be presumed to be correct in the absence of any proof to the contrary being submitted by the claimant.

History.

Acts 1969, ch. 299, § 3; 1970, ch. 578, § 2; 1971, ch. 213, § 1; 1973, ch. 84, § 2; T.C.A., § 57-233; Acts 2014, ch. 861, §§ 13-15.

Law Reviews.

The Tennessee Department of Revenue and the Uniform Administrative Procedures Act (Mike Norton), 6 Mem. St. U.L. Rev. 303.

57-5-411. Disposition of seized property — Application of proceeds — Taxes paid before delivery of property.

(a) In the event the ruling of the commissioner is favorable to the claimant, the commissioner shall deliver to the claimant the property so seized. If the ruling is adverse to the claimant, or if a hearing is not applied for in writing within the ten (10) days following notice, and the commissioner determines the products to be salable, the commissioner is authorized to order sale of the property in the manner as herein provided, applying the proceeds from the sale first to the costs incurred in the seizure and sale of such articles and the balance, if any, to the state general fund, to be apportioned as tax under

§ 57-5-205. In the case of any contraband property seized by any law enforcement officer of any incorporated municipality or of any county and turned over by them to the department for confiscation, there shall be paid to the municipality or to the county served by such officer fifty percent (50%) of the net proceeds thereof. Any such beer, other beverages or vehicles so seized and ordered sold by the commissioner shall be sold at public sale by the department of general services, and the procedure to be followed shall be the same as now authorized by law under § 67-4-1021. It shall be incumbent upon the commissioner to notify a Tennessee distributor handling the same brand(s) of beer and/or other such beverages as that seized of such seizure and impending sale. All confiscated beer, suitable for sale at retail, shall first be offered for sale to the Tennessee wholesaler located nearest the site of the seizure engaged in handling the particular brand of beer involved at the same per case price (state beer barrelage tax included) that the wholesaler would be required to pay for such beer at the brewery. All confiscated beer "suitable for sale at retail" not purchased within ten (10) days by the Tennessee wholesaler, after being notified that such beer had been confiscated and was being offered for sale to such wholesaler, then shall be sold at public sale by the department of general services.

(b) The seventeen percent (17%) wholesale beer tax as authorized in § 57-6-103 shall be added to the public sale price and the funds derived shall be remitted to the city in which the public sale is held. "Suitable for sale at retail" is determined by the commissioner.

(c) The commissioner, before delivering any seized property to the successful bidder, shall require any tax due thereon to be paid to the department of revenue. Any seized beer or other beverages not sold within ninety (90) days following hearing, or declared to be unsalable by the commissioner, shall be destroyed by the commissioner in a manner which the commissioner may prescribe.

History.
Impl. am. Acts 1959, ch. 9, § 5; impl. am. Acts 1961, ch. 97, § 5; Acts 1969, ch. 299, § 3; 1972, ch. 448, § 5; impl. am. Acts 1972, ch. 543, § 7; Acts 1973, ch. 68, § 8; T.C.A., § 57-234.

57-5-412. Costs and fees of hearing.

(a) Costs incurred in each hearing, including witness fees, mileage expenses and all fees of sheriffs for serving any notices or subpoenas, shall be taxed as costs by the commissioner or the commissioner's authorized representative. All costs and fees for witnesses and/or sheriffs shall be advanced or collected as provided in the case of witnesses attending upon cases in courts of record, and the service of subpoenas requiring their attendance and testimony.

(b) If, upon the hearing, the claimant shall be found by the commissioner, or the commissioner's authorized representative, to be guilty of the matters charged, all of the costs provided for in subsection (a) shall be taxed and charged against the claimant, but if the charge against such claimant shall be dismissed, then such costs shall be paid by the commissioner out of the funds collected under this chapter, after approval by the commissioner, and shall be and constitute lawful expenditures hereunder.

History.
Acts 1969, ch. 299, § 3; T.C.A., § 57-235.

57-5-413. Review of action of commissioner.

Any action of the commissioner shall be reviewable by a petition for a common-law writ of certiorari in the chancery or circuit court of the county in which the offense occurred, which petition shall be filed within ten (10) days from the date of such action. Immediately upon the grant of the writ of certiorari, the commissioner shall cause to be made, certified and forwarded to the court a complete transcript of the proceedings in the cause, which shall contain all the proof submitted before the commissioner. The decision of the commissioner shall be reviewed solely upon the pleadings and transcript of the proceedings before the commissioner, and neither party shall be entitled to introduce any additional evidence in the court. The scope of any review proceedings involving persons already licensed as Tennessee beer wholesalers under this chapter shall be governed by § 57-5-108 instead of the procedure set forth herein.

History.
Acts 1969, ch. 299, § 3; 1973, ch. 84, § 3; T.C.A., § 57-236.

Law Reviews.
The Tennessee Department of Revenue and the Uniform Administrative Procedures Act (Mike Norton), 6 Mem. St. U.L. Rev. 303.

57-5-414. Inspection of products, records, documents and premises — Violation.

Every distributor or dealer in beer or other such beverages shall permit the commissioner, or the commissioner's authorized agent or representative, to inspect at any time all products, invoices, books, papers and memoranda as may be deemed necessary by the commissioner in ascertaining whether or not the tax levied under this chapter has been paid, or in determining the amount of such tax due. No licensed distributor or dealer shall be permitted to claim any part of the premises whereon the business was conducted to be exempt from inspection as being the licensed distributor's or dealer's dwelling or home, the application for certificate of registration under this chapter being declared an express waiver of such claim. All persons failing to permit the examination of such products, invoices, books and other memoranda, including the general books, both operating and proprietary ledgers, etc., or interfering with the orderly inspection or examination thereof, or failing to file such reports as may be required by the commissioner, is guilty of a misdemeanor.

History.
Acts 1969, ch. 299, § 3; T.C.A., § 57-237.

Compiler's Notes.
The misdemeanor penalty provisions in this section may have been affected by the Criminal Sentencing Reform Act of 1989. See §§ 39-11-114, 40-35-110, 40-35-111.

Cross-References.
Penalty for violating chapter, § 57-5-303.

57-5-415. Enforcement authorities.

(a) Any duly authorized representative, agent or employee of the depart-

ment of revenue who has been designated by the commissioner to enforce this chapter is authorized and empowered to execute search warrants and do all acts incident thereto, in the same manner as search warrants may be levied by sheriffs and other peace officers. Inspectors, agents, representatives or officers appointed by the commissioner shall be cloaked with and have the duty, power and authority as a police officer to enforce the revenue provisions of this chapter and in the illegal traffic of untaxed beer products. The highway patrol shall likewise have concurrent authority to assist in the enforcement of this chapter and in the illegal traffic of untaxed beer products.

(b) Any duly authorized representative or employee of the department who has been specifically designated by the commissioner to enforce § 57-5-409 is hereby authorized and empowered to go armed or carry a pistol while on active duty engaged in enforcing § 57-5-409.

History.
Acts 1969, ch. 299, § 3; 1970, ch. 578, § 3; 1971, ch. 288, § 1; T.C.A., § 57-238.

57-5-416. Storage at location other than specific retail location for which purchased unlawful.

In order to facilitate the effective collection and enforcement by municipal and county officials of the tax levied by § 57-6-103 on all sales of beer by wholesalers to retailers or any other persons, it shall be unlawful for any retailer to store beer purchased for a specific retail location at any place other than that specific retail location.

History.
Acts 1971, ch. 21, § 1; T.C.A., § 57-239; Acts 2018, ch. 933, § 4.

Amendments.
The 2018 amendment rewrote the section which read: "Unless authorized in writing by the appropriate county, municipal or metropolitan beer board or committee to do so, it is unlawful for any retailer to store beer at any place other than the address designated on the retailers' beer permit."

Effective Dates.
Acts 2018, ch. 933, § 7. July 1, 2018.

Cross-References.
Penalty for violating chapter, § 57-5-303.

PART 5

BEER WHOLESALER-SUPPLIER RELATIONS

57-5-501. Purpose.

The legislative intent and purpose of this part is to provide a structure for the business relations between suppliers and wholesalers of beer which:

(1) Motivates suppliers and wholesalers to devote reasonable efforts and resources to the sale, distribution and quality control of beer in this state;

(2) Provides for the private settlement of disputes between suppliers and wholesalers as an alternative to civil litigation, which would consume the time and resources of the parties and the judicial system; and

(3) Promotes public health, safety and welfare.

History.
Acts 1990, ch. 618, § 1.

Cross-References.
Transportation, title 57, ch. 5, part 4.

57-5-502. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Agreement" means any agreement between a wholesaler and a supplier, oral or written, whereby a wholesaler is granted the right to purchase and sell a brand or brands of beer with an alcoholic content of five percent (5%) by weight or less sold by a supplier;

(2) "Ancillary business" means:

(A) A business owned by a wholesaler, by a substantial stockholder of a wholesaler, or by a substantial partner of a wholesaler, the primary business of which is directly related to the transporting, storing or marketing of the supplier's products; or

(B) A business owned by a wholesaler, a substantial stockholder of a wholesaler, or by a substantial partner of a wholesaler, which recycles empty beverage containers;

(3) "Designated member" means:

(A) The spouse, child, grandchild, parent, brother or sister of a deceased individual who owned an interest in a wholesaler;

(B) Any person who inherits an ownership interest in a wholesaler;

(C) The appointed and qualified personal representative and the testamentary trustee of a deceased individual owning an interest in a wholesaler; or

(D) The person appointed by a court as the guardian or conservator of the property of an incapacitated individual owning an interest in a wholesaler;

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade, as defined in and interpreted under § 47-2-103(1)(b);

(5) "Person" means any individual, partnership, corporation, association, syndicate, or any other combination of individuals;

(6) "Reasonable standards and qualifications" means those criteria established and consistently applied by a supplier to wholesalers in Tennessee and adjoining states who:

(A) Have entered into, continued or renewed an agreement with the supplier during a period of twenty-four (24) months prior to the proposed transfer of the wholesaler's business; or

(B) Have changed managers or successor managers during a period of twenty-four (24) months prior to the proposed change in manager or successor manager of the wholesaler's business;

(7) "Retaliatory action" includes, but is not limited to, the refusal to continue an agreement or a material reduction in the quality of service or quantity of products available to a wholesaler under an agreement, which refusal or reduction is not made in good faith;

(8) "Substantial stockholder" or "substantial partner" means a stockholder of or partner in the wholesaler who owns an interest of ten percent (10%) or more of the partnership or of the capital stock of a corporate

wholesaler;

(9) "Supplier" means a manufacturer or importer of beer;

(10) "Transfer of wholesaler's business" or "transfer of the wholesaler's business" means the voluntary sale, assignment or other transfer of all or control of the business, or all or substantially all of the assets of the wholesaler, or all or control of the capital stock of the wholesaler, including without limitation the sale or other transfer of capital stock or assets by merger, consolidation or dissolution, or of the capital stock of the parent corporation, or of the capital stock or beneficial ownership of any other entity owning or controlling the wholesaler; and

(11) "Wholesaler" means a person or entity that sells beer to retailers, but does not include any manufacturer authorized to sell directly to retailers pursuant to § 57-5-101.

History.
Acts 1990, ch. 618, § 2; 2014, ch. 861, §§ 18, 19; 2015, ch. 19, § 4.

Cross-References.
Definitions for the Sales chapter of the Uniform Commercial Code, § 47-2-103.

57-5-503. Prohibitions.

The following are prohibited under this part:

(1) A wholesaler shall not:

(A) Transfer the wholesaler's business without giving the supplier written notice of the proposed transfer of the business as required by this part; or

(B) Transfer the wholesaler's business without receiving the supplier's written approval for the proposed transfer, where required by an agreement and consistent with this part.

(2) A supplier shall not:

(A) Coerce, or attempt to coerce, any wholesaler to do any illegal act or to violate any law or regulation either by threatening to amend, modify, cancel, terminate, or refuse to renew any agreement existing between the supplier and the wholesaler, or by any other means;

(B) Coerce, or attempt to coerce, any wholesaler to accept delivery of any beer or other commodity which has not been ordered by the wholesaler or, if ordered, has been cancelled by the wholesaler in accordance with reasonable cancellation procedures of the supplier. A supplier may impose reasonable inventory requirements upon a wholesaler if the requirements are made in good faith and are generally applied to other wholesalers in Tennessee and adjoining states having an agreement with the supplier;

(C) Withhold delivery of beer ordered by a wholesaler or change a wholesaler's quota of a brand or brands if the withholding or change is not made in good faith;

(D) Require a wholesaler to purchase one (1) or more brands of beer or other products in order for the wholesaler to purchase another brand or brands of beer for any reason. If a wholesaler has agreed to distribute a brand or brands before March 1, 1990, that wholesaler shall continue to distribute the brand or brands in conformance with this part;

(E) Require a wholesaler to assent to any condition, stipulation or

provision unreasonably limiting the wholesaler's right to sell a brand or brands of beer or other products of any other supplier;

(F) Require a wholesaler to submit audited financial information, including, but not limited to, profit and loss statements, balance sheets, financial records or specific information regarding competitive brands, as a condition of renewal or continuation of an agreement;

(G) Require a wholesaler by any means to participate directly in or contribute to any local or national advertising fund or purchase any merchandising material controlled either directly or indirectly by the supplier;

(H) Require a wholesaler to terminate the designation of an individual as a manager or successor manager without just cause. A supplier has just cause to require termination of the designation of an individual as a manager or successor manager only if the person designated by the wholesaler fails to meet reasonable standards and qualifications. In any action challenging such termination, the supplier shall have the burden of proving that such person fails to meet such standards and qualifications;

(I) Take any retaliatory action against a wholesaler who files a complaint with any regulatory body or in any court of law regarding an alleged violation by the supplier of federal, state or local law or of any administrative rule; or

(J) Threaten to cancel or withhold credit, or to reduce the time period normally given the wholesaler to make payment on a delivery from the supplier as a means of compelling the wholesaler to meet certain standards of performance in any area of business not directly related to credit.

History.
Acts 1990, ch. 618, § 3.

57-5-504. Transfer of wholesaler's business.

(a) A wholesaler shall give the supplier written notice of the wholesaler's proposed transfer of the wholesaler's business not less than thirty (30) days prior to the completion of the transfer, except in cases of transfer by inheritance, in which case the transferee shall give the supplier written notice of the transferee's ownership interest within a reasonable time after the transfer is completed.

(b) A supplier's consent shall not be required for any transfer of the wholesaler's business to a designated member or for any transfer of less than control of the wholesaler's business; however, a supplier's written consent shall be required for any transfer of the wholesaler's business to a person other than a designated member.

(c) Notwithstanding subsection (b), written consent from a supplier shall be required for any transfer of the wholesaler's business to a designated member or other transferee if any of the following conditions apply:

(1) The transferee or any owner of the transferee has been convicted of a felony under the United States Code or the laws of any state which would adversely affect the good will or interests of the wholesaler or supplier;

(2) The transferee or any owner of the transferee has had a previous

alcoholic beverage license revoked or suspended by the regulatory agency of the United States government or any state, whereby service was interrupted for more than ninety (90) days;

(3) The transferee or any owner of the transferee is insolvent or has filed any voluntary or involuntary petition under any bankruptcy or receivership laws, or has executed an assignment for the benefit of creditors; or

(4) The transferee or any owner of the transferee has had any previous agreement with the supplier involuntarily terminated, cancelled, discontinued or not renewed by the supplier for good cause.

(d) If the transferee is a designated member, a supplier shall not interfere with, prevent or unreasonably delay the transfer of the wholesaler's business. An unreasonable delay is one that exceeds thirty (30) days after the intended date of transfer as set forth in the notice required by subsection (a).

(e) If the transferee is not a designated member, a supplier may not withhold consent or unreasonably interfere with or delay the transfer if the transferee meets reasonable standards and qualifications which are nondiscriminatory and material. An unreasonable delay is one that exceeds thirty (30) days after the receipt of all material information reasonably requested. The supplier shall have the burden of proving that the proposed transferee does not meet such standards and qualifications.

History.
Acts 1990, ch. 618, § 4.

57-5-505. Termination or modification of agreement with wholesaler by supplier upon written notice — Conditions.

(a) A supplier may amend, modify, terminate, cancel, discontinue or fail to renew an agreement with a wholesaler immediately upon written notice given by the supplier as provided in § 57-5-508 only if any of the following occurs:

(1) Revocation of a governmental permit held by the wholesaler, whereby the wholesaler cannot service the wholesaler's sales territory for a period of more than sixty (60) days;

(2) Insolvency of the wholesaler, the filing of any petition by or against the wholesaler under any bankruptcy or receivership law, or the assignment for the benefit of creditors or dissolution or liquidation of the wholesaler, where such condition materially affects the wholesaler's ability to remain in business;

(3) Fraud by the wholesaler in dealings with the supplier or its products that adversely affects the interests of the supplier;

(4) Violation of § 57-6-104(f), if it was done at the direction or with the knowledge of a substantial stockholder or substantial partner. If a governmental permit held by a wholesaler is suspended temporarily so that the wholesaler cannot service its sales territory for a brand or brands, then upon agreement of the supplier of that brand or brands and the wholesaler whose permit has been suspended, another wholesaler who handles the same brand or brands can service the sales territory during the period of suspension; or

(5) The wholesaler has failed to pay for beer ordered and delivered in accordance with established terms with a supplier and fails to make full

payment within five (5) business days after receipt of written notice of the delinquency and demand for immediate payment from the supplier.

(b) Where the wholesaler notifies the supplier in writing by certified mail of the wholesaler's intent to cease distribution of a brand sold by the supplier, the supplier can amend, modify, terminate, cancel, discontinue or fail to renew the agreement immediately with respect to that brand.

History.
Acts 1990, ch. 618, § 5.

57-5-506. Termination or modification of agreement with wholesaler by supplier in not less than 30 days upon written notice — Conditions.

A supplier may amend, modify, terminate, cancel, discontinue or fail to renew an agreement with a wholesaler not less than thirty (30) days after written notice is given by the supplier as provided in § 57-5-508 if any of the following events occur:

(1) The supplier discontinues production or discontinues distribution in this state of a brand sold by the supplier to the wholesaler.

(A) Nothing in this section shall prohibit a supplier from conducting test marketing of a new brand of beer or a brand of beer which is not currently being sold in this state; provided, that the supplier has notified the state in writing of its plans to conduct test marketing, which notice shall describe the market area in which the test shall be conducted, the name or names of the wholesaler or wholesalers who will be selling the beer, the name or names of the brand of beer being tested, and the period of time, not to exceed eighteen (18) months, during which the testing will take place.

(B) If a supplier discontinues production or distribution in this state of a brand pursuant to this section, then that supplier cannot reintroduce that brand into this state for a period of twelve (12) months after providing the written notice required by this section.

(C) Whenever a supplier discontinues production or distribution in this state of a brand, the supplier shall be required at the wholesaler's request to purchase from the wholesaler any unsold inventory of the brand; or

(2) A stockholder or a partner of the wholesaler has been convicted of a felony under the United States Code or the laws of any state which would adversely affect the good will or interests of the wholesaler or supplier. If another stockholder or other stockholders, or partner or partners, or a designated member or members notifies the supplier in writing within thirty (30) days after the conviction of an intent to purchase the partnership interest or the stock of the offending stockholder or partner and purchases the interest or stock within a reasonable time after notice is given, then this subdivision (2) shall not apply. Any purchase of an interest or stock pursuant to this subdivision (2) will be subject to the requirements of supplier consent contained in § 57-5-504.

History.
Acts 1990, ch. 618, § 6.

57-5-507. Termination or modification of agreement with wholesaler by supplier — Prerequisites.

Except as provided in §§ 57-5-505 and 57-5-506, a supplier may not amend, modify, terminate, cancel, discontinue or refuse to renew an agreement with a wholesaler, or cause a wholesaler to resign from an agreement, unless the supplier has complied with the following requirements:

(1) The supplier shall give written notice to the wholesaler, as provided in § 57-5-508, not less than ninety (90) days prior to the effective date of the amendment, modification, termination, cancellation, discontinuance or nonrenewal;

(2) The supplier acts in good faith. The supplier shall have the burden of proving that it acted in good faith;

(3) The supplier has good cause. In any action challenging the supplier's action under this section, the supplier shall have the burden of proving that it has good cause. Good cause exists when all of the following have occurred:

(A) The wholesaler has failed to comply substantially with essential and reasonable requirements imposed upon the wholesaler by the agreement, if such requirements are not discriminatory, either by their terms or in the methods of their enforcement, as compared with requirements imposed on other wholesalers in Tennessee or adjoining states and if such requirements are not in violation of any law or regulation;

(B) The supplier first acquired knowledge of the failure described in subdivision (3)(A) not more than twenty-four (24) months before the date notification was given pursuant to this section;

(C) The supplier has given written notice to the wholesaler, stating specifically the manner in which the wholesaler has failed to comply with the agreement; and

(D) The wholesaler was given adequate opportunity to use good faith efforts to correct the failure to comply with the agreement. Adequate opportunity shall be thirty (30) days to submit a plan of corrective action to comply with the agreement and an additional ninety (90) days after the thirty-day period to correct the failure in accordance with the plan.

History.
Acts 1990, ch. 618, § 7.

57-5-508. Termination or modification of agreement with wholesaler by supplier — Notice.

Notice by a supplier of any amendment, modification, termination, cancellation, discontinuance or refusal to renew an agreement with the wholesaler shall be written, shall be made by certified mail, and shall contain all of the following:

(1) A statement of intention to amend, modify, terminate, cancel, discontinue or refuse to renew the agreement;

(2) A statement of the reason(s) for the amendment, modification, termination, cancellation, discontinuance or nonrenewal; and

(3) The date on which the amendment, modification, termination, cancellation, discontinuance or nonrenewal will take effect.

History.
Acts 1990, ch. 618, § 8.

57-5-509. Disputes — Arbitration.

Any dispute arising under this part may be settled by arbitration if every party involved in the dispute agrees to arbitrate. Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association and the laws of this state, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. A wholesaler has the absolute right to refuse to arbitrate any dispute arising under this part.

History.
Acts 1990, ch. 618, § 9.

57-5-510. Legal remedies.

(a) If a supplier engages in conduct prohibited under this part, a wholesaler with which the supplier has an agreement may maintain a civil action against the supplier to recover actual damages, all court costs, and, in the court's discretion, attorney's fees, reasonably incurred as the result of the prohibited conduct. If a wholesaler engages in conduct prohibited under this part, a supplier with which the wholesaler has an agreement may maintain a civil action against the wholesaler to recover actual damages, all court costs, and, in the court's discretion, attorney's fees, reasonably incurred as a result of the prohibited conduct. Actual damages shall include damages to any ancillary business of the wholesaler incurred as a result of the prohibited conduct.

(b) A supplier or wholesaler may bring an action for declaratory judgment for determination of any controversy arising pursuant to this part.

(c) Upon proper application to the court, a supplier or wholesaler may obtain injunctive relief against any violation of this part.

(d) The remedies provided by this section shall not abolish any other cause of action or remedy available to the supplier or the wholesaler.

(e) Any legal action taken under this part, or pursuant to a dispute arising out of an agreement or breach thereof, or over the provisions of an agreement, shall be filed in a court, state or federal, located in Tennessee, which state court is located in, or which federal court has jurisdiction and venue of, the county in which the wholesaler maintains its principal place of business in this state.

History.
Acts 1990, ch. 618, § 10.

57-5-511. Waiver of rights by wholesaler prohibited — Voluntary settlement of disputes.

A wholesaler may not waive any of the rights granted in any provision of this part and the provisions of any agreement which would have such an effect shall be null and void; however, if a good faith dispute arises between the parties as to the meaning of any rights or obligations created by this part, or the performance by a party of its obligations, the parties may enter into a written voluntary settlement of the dispute.

History.
Acts 1990, ch. 618, § 11.

57-5-512. Applicability.

(a) This part applies to agreements in existence on March 1, 1990, as well as agreements entered into or renewed after that date.

(b) A transferee of a wholesaler's business that continues to operate the business shall have the benefit of and be bound by all terms and conditions of the agreement with the supplier in effect on the date of the transfer.

(c) If a particular brand or brands of beer are transferred by purchase or otherwise from one supplier to another, the new supplier shall be bound by all terms and conditions of each agreement of the previous supplier with respect to that brand or brands in effect on the date of the transfer as a condition of continuing to sell that brand or brands in this state.

(d) An agreement to purchase and sell a brand of beer shall include the right to purchase and sell each other beer marketed under the same principal brand name or trademark, regardless of any variation in any other words, names, symbols or devices used to identify such beers and regardless of any differences in the packaging, formulation or production of such beers. Notwithstanding the foregoing, an agreement to purchase and sell a brand of beer shall not include the right to purchase and sell any other beer solely as a result of the use of the manufacturer's or importer's trade name in both such beers' packaging, so long as such trade name is not part of the beers' principal brand name or trademark.

(e) This part shall only be applicable to agreements between wholesalers and suppliers related to the sale or distribution of beer with an alcoholic content of five percent (5%) by weight or less. All agreements between wholesalers and suppliers related to the sale or distribution of beer with an alcoholic content greater than five percent (5%) by weight shall be governed by title 47, chapter 25, part 15.

History.
Acts 1990, ch. 618, § 12; 1994, ch. 663, § 1; 1996, ch. 748, § 1; 2014, ch. 861, § 23.

PART 6

TENNESSEE RESPONSIBLE VENDOR ACT OF 2006

57-5-601. Short title.

This part shall be known and may be cited as the "Tennessee Responsible Vendor Act of 2006."

History.
Acts 2006, ch. 864, § 2.

Cross-References.
Sales to minors or intoxicated persons prohibited, § 57-5-301.

57-5-602. Legislative intent.

It is the intent of the legislature through the provisions of this part:

(1) To eliminate the sale of beer for off-the-premises consumption to, and consumption of beer by, underage persons;

(2) To reduce intoxication and to reduce accidents, injuries, and deaths in the state that are related to intoxication;

(3) To encourage vendors to be prudent in their selling practices of beer, and to restrict or reduce the sanctions that may be imposed in administrative proceedings by local beer boards against those vendors who voluntarily comply with responsible practices in accordance with this part; and

(4) To uniformly apply all provisions in this part statewide, including training, certification and the imposition of penalties or other sanctions for violations of this part, and that no variations from the provisions on training, certification or penalties are permissible.

History.
Acts 2006, ch. 864, § 3.

57-5-603. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Beer" has the same meaning as defined in § 57-5-101(b);

(2) "Beer board" means any entity issuing beer permits for off-premise consumption, pursuant to part 1 of this chapter;

(3) "Certified clerk" means a clerk who has successfully satisfied the training requirements contained in this part, and who has received certification from a responsible vendor training program;

(4) "Clerk" means any person working in a capacity to sell beer directly to consumers for off-premise consumption;

(5) "Commission" means the alcoholic beverage commission;

(6) "Responsible vendor" means a vendor that has received certification from the commission pursuant to this part;

(7) "Responsible vendor training program" means a training program related to the responsible sale of beer for off-premise consumption that has met all the statutory and regulatory requirements set forth in this part, and in commission rules and regulations; and

(8) "Vendor" means a person, corporation or other entity that has been issued a permit to sell beer for off-premise consumption.

History.
Acts 2006, ch. 864, § 4.

57-5-604. Authority of commission.

The commission shall have the authority to approve all responsible vendor training programs. The commission shall establish requirements and guidelines for responsible vendor training programs and vendor and clerk certifications. The commission shall establish and keep a master list of certified clerks and clerks not eligible for certification.

History.
Acts 2006, ch. 864, § 5.

57-5-605. Vendor certification — Rules and regulations — Monitoring and enforcing compliance — Statistical reports by beer boards and commission.

(a) A vendor who seeks certification as a responsible vendor shall provide to the commission, pursuant to procedures adopted by the commission, evidence of compliance with the requirements of this part. Upon satisfactory proof that the vendor has complied with the requirements, the commission shall certify the vendor as a responsible vendor. Certification as a responsible vendor shall be renewed every year. Responsible vendors may have their own training programs certified, or send their employees to any training program certified by the commission.

(b) The commission shall adopt rules and regulations for monitoring compliance by responsible vendors and for revoking or suspending a responsible vendor's certification for noncompliance with this part.

(c) The commission is authorized to monitor and enforce compliance with this part. The commission may impose fines on responsible vendors whose training programs fail to satisfy or maintain the requirements of this part or commission rules. The commission may further impose fines on vendors who hold themselves out as being a responsible vendor when in fact they do not hold that status. The commission may also impose fines on responsible vendors who willfully fail to comply with the requirements of this part.

(d) Determination of compliance with the responsible vendor program is the sole province of the commission.

(e)(1) As used in this subsection (e), "beer board" means the local legislative body or committee appointed by the local legislative body having authority to issue licenses or permits under this chapter.

(2) To the extent the beer board has access to the information required pursuant to this subsection (e), the beer board shall file with the alcoholic beverage commission an annual statistical report by February 1 of each year based on the previous calendar year's information detailing the following:

(A) The total number of beer permits or licenses issued by the beer board for off-premises consumption;

(B) The number of violations for the sale of beer for off-premises consumption to a person under twenty-one (21) years of age resulting from:

(i) A "sting" conducted pursuant to § 39-15-413; and

(ii) Arrests made under conditions not related to a "sting";

(C) Whether the violation of subdivision (B) occurred at an establishment participating in the responsible vendor program;

(D) Whether if a "sting" was conducted pursuant to § 39-15-413 at an establishment participating in the responsible vendor program, the underage person used in the "sting" was unsuccessful in making the purchase;

(E) The type and number of violations other than the sale of beer for off-premises consumption to a person under twenty-one (21) years of age occurred at establishments selling beer for off-premises consumption;

(F) The name of the license or permit holder at the location where the violation occurred; and

(G) The specific penalty imposed by the beer board for each violation upon a finding that a violation occurred.

(3) The alcoholic beverage commission shall compile the statistical information received from the beer boards and file a report with the state and local government committee of the senate and the state government committee of the house of representatives by March 15 of the year in which the report is received, together with recommendations for legislative changes related to the responsible vendor program, if any are recommended by the commission.

(4) The report made pursuant to subdivision (3) shall be made available by the alcoholic beverage commission to any person filing a written request for a copy of the report.

History.
Acts 2006, ch. 864, § 6; 2012, ch. 964, § 1;
2013, ch. 236, § 68.

57-5-606. Qualification for responsible vendor status.

In order to qualify for responsible vendor status, the vendor shall comply with the following requirements:

(1)(A) Require each and every clerk to successfully complete a responsible vendor training program within sixty-one (61) days of commencing employment, whether the employment is for the first time, after rehiring, or for a different responsible vendor. Responsible vendors shall, prior to employing a clerk, verify with the commission that the clerk is eligible for certification;

(B) Each clerk shall successfully complete the responsible vendor training program and after doing so, receive a certificate of completion from the program trainer in a format that is in accordance with rules promulgated by the commission. A clerk shall not be authorized to sell beer for off-premise consumption, unless the clerk has successfully completed the responsible vendor training program and has received a certificate of completion or is within sixty-one (61) days of the date of hire. The original certificate of completion shall be maintained by the responsible vendor employing the clerk. The responsible vendor shall provide the commission with the names and other identifying information as required by the commission, of certified clerks within twenty-one (21) days of the date of training; and

(C) Each clerk shall be issued a name badge by the responsible vendor employer. The name badge must have the clerk's first name clearly visible. Clerks shall wear this name badge at all times during which they are on duty;

(2) Provide instruction for its employees approved by the commission, which shall include the following:

(A) Laws regarding the sale of beer for off-premise consumption;

(B) Methods of recognizing and dealing with underage customers; and

(C) Procedures for refusing to sell beer to underage customers and for

dealing with intoxicated customers;

(3) Require all certified clerks to attend at least one (1) annual meeting, at which the responsible vendor shall disseminate updated information prescribed by the commission and the responsible vendor policies and procedures related thereto. In order for the clerk's certification to remain valid, the clerk must attend an annual meeting each year following the clerk's original certification; and the responsible vendor must keep records thereof. Responsible vendors shall notify the commission if a certified clerk does not attend an annual meeting as required by this section. The commission may, at any time, require responsible vendors to disseminate to certified clerks information from the commission that is related to changes in state law or commission rules; and

(4) Maintain employment and all responsible vendor training records of all clerks.

History.
Acts 2006, ch. 864, § 7; 2008, ch. 877, § 2.

57-5-607. Loss of certification for sale to minor.

If a beer board determines that a sale to a minor occurred by an off-premise beer permit holder, then the certification of the clerk making the sale shall be invalid and the clerk may not reapply for a new certificate for a period of one (1) year from the date of the beer board's determination. Beer boards shall report the names of such clerks to the commission within fifteen (15) days of finding that a sale to a minor occurred. The commission shall notify the responsible vendor of their certified clerks who have lost their certification within fifteen (15) days of notification by the beer board.

History.
Acts 2006, ch. 864, § 8.

57-5-608. Suspension or revocation of certification.

(a) A permit under this part may not be suspended or revoked by a beer board based on a clerk's illegal sale of beer to a minor person who is not of lawful drinking age, if the clerk is properly certified and has attended annual meetings since the original certification, or is within sixty-one (61) days of the date of hire at the time of the violation.

(b) Notwithstanding subsection (a), the commission shall revoke the certification of a vendor certified as a responsible vendor, if the vendor had knowledge of the violation or should have known about the violation, or participated in or committed the violation. If the commission revokes a vendor's certification under this section, the vendor shall be penalized for the violation by the beer board as if the vendor were not certified as a responsible vendor.

(c) Notwithstanding subsection (a) or any other law, the commission shall revoke the vendor's status as a certified responsible vendor, if the vendor has two (2) violations within a twelve-month period. The revocation shall be for a period of three (3) years.

History.
Acts 2006, ch. 864, § 9.

57-5-609. Responsible vendor fees — Responsible vendor certification fund.

(a) Each entity submitting and receiving approval for a responsible vendor training program shall pay an annual nonrefundable fee of thirty-five dollars ($35.00). In addition, each responsible vendor shall pay an annual fee that is based on the number of certified clerks existing at the time a responsible vendor applies to the commission for certification. The fees shall be as follows:

(1) 0-15 certified clerks - $25.00;

(2) 16-49 certified clerks - $75.00;

(3) 50-100 certified clerks - $150; and

(4) Over 100 certified clerks - $250.

(b) The fees shall be deposited by the commission in a special agency account to be known as the responsible vendor certification fund, referred to in this part as the fund.

(c) Any fund balance remaining unexpended at the end of a fiscal year shall be carried forward into the subsequent fiscal year and shall continue to be preserved for the administration of the vendor certification program.

(d) Interest accruing on investments and deposits of the fund shall be carried forward into the subsequent fiscal year.

(e) Moneys in the fund shall be invested by the state treasurer in accordance with § 9-4-603. The fund shall be administered by the commission.

(f) Moneys in the fund shall only be expended and obligated in accordance with appropriations made by the general assembly for the purposes as provided in this part.

History.
Acts 2006, ch. 864, § 10.

CHAPTER 6

WHOLESALE TAXES

Part 1. Wholesale Beer Tax

Section

57-6-101. Short title.
57-6-102. Part definitions.
57-6-103. Levy of tax — Disposition — Collection.
57-6-104. Wholesale prices, container sizes, and sales territories — Regulations — Information declared public record.
57-6-105. Records and reports.
57-6-106. Investigations by the department.
57-6-107. Wholesaler's bond — Collection of delinquent taxes — Penalties.
57-6-108. Cash sales only to retailers.
57-6-109. Breakage and shortage adjustments only at time of delivery — Quality control.
57-6-110. Gifts or inducements to retailers — Discounts to consumers.
57-6-111. Exemption of sales to armed forces installations.
57-6-112. Exclusiveness of tax.
57-6-113. Enforcement of law.
57-6-114. Criminal penalties.
57-6-115. Damaged or unaccepted goods — Tax liability.
57-6-116. Expenses of enforcement of law limited.

Section
57-6-117. Construction of law — Invalidity.
57-6-118. Effect of unconstitutionality of part.

Part 2. Wholesale Tax on Other Alcoholic Beverages

57-6-201. Tax levy — Enforcement — Disposition of collections.
57-6-202. Audits and investigations — Penalty for noncompliance.

PART 1

WHOLESALE BEER TAX

57-6-101. Short title.

This part shall be known as the "Wholesale Beer Tax Act."

History.
Acts 1953, ch. 76, § 1 (Williams, § 1051.18); T.C.A. (orig. ed.), § 57-301.

Textbooks.
Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 4.

Law Reviews.
Preferences, Priorities, and Powers of the State in the Collection of Delinquent Revenue: Tennessee's Tax Enforcement Procedures Act (Donald J. Serkin), 8 Mem. St. U.L. Rev. 707.

57-6-102. Part definitions.

For the purposes of this part:

(1) "Beer" means the beverage defined in § 57-5-101(b);

(2) "County" means that portion of a county outside the corporate limits of municipalities therein;

(3) "Department" means the department of revenue;

(4) "Gross tax" means the amount of tax collected by a wholesaler;

(5) "Municipality" means any town, city or taxing district incorporated under the laws of this state;

(6) "Net tax" means the amount of tax to be paid to a county or municipality after deduction of the percentage due the department and the percentage retained by a wholesaler;

(7) "Person" means any individual, partnership, corporation, association, syndicate, or any other combination of individuals;

(8) "Quality control standard" means a standard under which a wholesaler determines whether beer is marketable due to product deterioration or due to improper packaging or handling by the manufacturer or wholesaler;

(9) "Retailer" means a person who sells beer for consumption and not for resale;

(10) "Wholesale" or "wholesale sale" means a sale, gift, or other transfer and delivery of beer by a wholesaler to any person other than another wholesaler, but there shall not be included within the meaning of either term any gratuitous dispensing of beer by a brewery of its own manufacture which is consumed on the premises; and

(11) "Wholesaler" means a person or entity that sells beer to retailers, including any manufacturer authorized to sell directly to retailers pursuant to § 57-5-101.

History.

Acts 1953, ch. 76, § 2 (Williams, § 1051.19); impl. am. Acts 1959, ch. 9, § 14; Acts 1969, ch. 171, § 1; 1969, ch. 212, § 2; T.C.A. (orig. ed.), § 57-302; Acts 1983, ch. 229, § 8; 1986, ch. 524, § 1; 1988, ch. 466, § 1; 1990, ch. 618, § 13; 2005, ch. 298, § 4; 2015, ch. 19, § 5.

Attorney General Opinions.

Licensing and taxation of hotels selling alcohol for consumption on the premises. OAG 16-05, 2016 Tenn. AG LEXIS 3 (2/9/2016).

DECISIONS UNDER PRIOR LAW

1. Municipality.

Town continued to exist under its original charter for sole purpose of promoting health, comfort and prosperity of citizens as a whole within its boundaries notwithstanding fact that authority to maintain fire department and to exercise certain police powers was withdrawn by subsequent amendment of its charter, and was a municipality within meaning of statute authorizing governing body of municipality to impose and collect privilege tax not to exceed 10 percent on retail sale of beer within its boundaries. Hamilton County v. East Ridge, 193 Tenn. 677, 249 S.W.2d 895, 1952 Tenn. LEXIS 341 (1952).

57-6-103. Levy of tax — Disposition — Collection.

(a) There is hereby imposed on the sale of beer at wholesale a tax equal to thirty-five dollars and sixty cents ($35.60) per barrel of thirty-one liquid gallons (31 gals.) of beer sold. The tax upon barrels containing more or less than thirty-one gallons (31 gals.) shall be taxed at a proportionate rate. Every wholesaler, on or before the twentieth day of each month, based on wholesale sales in the preceding calendar month, shall remit to each county the amount of the net tax on such person's wholesale sales to retailers and other persons in the county, and to each municipality the amount of the net tax on such person's wholesale sales to retailers and other persons within the corporate limits of the municipality.

(b) For the purpose of this chapter, all sales made by wholesalers at the wholesalers' places of business as well as any sale or transfer contemplated by § 57-5-101(c)(2) by a manufacturer operating as a retailer to a location owned or operated by such manufacturer-retailer, shall be deemed to be wholesale sales and the tax herein imposed shall be collected on all such sales.

(c) The tax collected on any such sales made to licensed retailers shall be paid to the county or municipality in which the retailer's place of business is located, and the tax on all other sales made at the wholesaler's place of business shall be paid to the county or city in which the wholesaler's place of business is located.

(d) Seventeen cents (17¢) of the gross tax owed per barrel shall be remitted at the same time to the department, to be kept in a special fund and to be used only for expenses of the department in the administration of this chapter.

(e) Ninety-two cents (92¢) of the gross tax owed per barrel shall be retained by the wholesaler or manufacturer operating as a retailer to defray the cost of collecting and remitting the tax.

(f) Any municipality having a metropolitan form of government and a population of over four hundred fifty thousand (450,000), according to the 1990 federal census or any subsequent federal census may, by ordinance of its legislative body, designate the county clerk as the collector of the tax herein authorized for the entire metropolitan taxing jurisdiction.

(g)(1) A municipality that is annexing territory by extension of its corporate

limits or a new incorporating municipality shall provide written notice of the date of the annexation or incorporation and the name and address of each retailer located in the annexed or newly incorporated territory to each wholesaler selling beer within the annexed or newly incorporated territory. The municipality shall deliver the written notice to the wholesaler's representative designated pursuant to § 57-5-105(c)(6). The tax imposed by this section shall be due to the municipality beginning with the first full calendar month after receipt of the notice required by this subsection (g) and thereafter.

(2) Taxes paid to a county pursuant to this section on sales to a retailer made before January 1, 2000, shall be deemed to satisfy any obligations that the wholesaler may have to pay taxes on the same sales to such municipality that has annexed or newly incorporated the territory where the retailer is located.

History.

Acts 1953, ch. 76, § 3 (Williams, § 1051.20); T.C.A. (orig. ed.), § 57-303; Acts 1983, ch. 234, § 1; 1994, ch. 758, § 2; 1999, ch. 47, § 1; 2013, ch. 189, §§ 1-7.

Compiler's Notes.

For tables of populations of Tennessee municipalities, see Volume 13 and its supplement.

Cross-References.

Changes in municipal boundaries, effect upon receipt and distribution of tax revenues, § 6-51-115.

Exemption from wholesale beer tax, § 57-6-111.

Receipt and distribution of tax revenues from annexed areas, § 6-51-115.

Wholesale beer tax, exclusiveness, § 57-6-112.

Law Reviews.

Local Government Law (Clyde L. Ball), 6 Vand. L. Rev. 1206.

57-6-104. Wholesale prices, container sizes, and sales territories — Regulations — Information declared public record.

(a) Each wholesaler shall maintain a wholesale price list, and shall file the list with the department and with the tax collecting official of each county and municipality wherein the wholesaler makes wholesale sales. Notice of any change in such price list shall be delivered to the department and the tax collecting official of each county and municipality as aforementioned. Notices required herein shall be filed as follows:

(1) In case of a new business or a wholesaler acquiring a new brand not previously distributed, a price list shall be filed within five (5) days after either occurrence; and

(2) In case of any change in an existing price list previously filed, a revised price list shall be filed at least three (3) days prior to the effective date of any change.

(b) A wholesaler shall not be permitted to file a wholesale price list that reduces the price of beer on quantity sales by brand, container, material and category even though the quantity wholesale price is uniform to all retailers and to all other persons. The price shall be fixed on each brand sold by container, material and category. It shall be the same price regardless of the quantity of beer sold of a given brand by container, material and category.

(c)(1) A wholesaler shall not sponsor or participate in any price-cutting maneuver, device or promotion by changing the wholesale price of beer of a given brand, container, material and category. As used in this section,

"category" means cans, returnable bottles, nonreturnable bottles, kegs and barrels; "container" means size in ounces; "material" means the principal material used to manufacture each category type, including, but not limited to, metal, glass or plastic.

(2) Nothing in this section shall prevent a wholesaler from permanently reducing the wholesale price of beer. However, any such wholesale price reduction to be construed to be permanent must remain in effect for at least three hundred sixty (360) days, or otherwise it shall be considered a wholesale beer price-cutting maneuver, device or promotion, and in direct violation of this section.

(3) Any wholesaler has the authority to increase the wholesale price of beer, and, in such an event, the increased wholesale price shall be construed and considered to be the posted wholesale beer price. There shall be no limitation on the number of increases of the wholesale price of beer allowed any wholesaler, but no increased wholesale price of beer shall be reduced by the wholesaler for at least three hundred sixty (360) days.

(4) Nothing in this section shall prevent a wholesaler from changing the wholesale price of beer on sales made only at the wholesaler's warehouse to retailers and other persons, regardless of the time element, as referred to in this section in cases of emergency where a wholesaler is unable to make delivery of beer to retail establishments.

(5) Nothing in this section shall prevent a wholesaler from raising the wholesale price of beer during a three hundred sixty (360) day posting period in an amount less than or equal to any increase in the federal excise tax or the state privilege tax levied in § 57-5-201. Such price increase shall be filed within ten (10) days of the date the tax increase takes effect.

(d) All wholesale beer price lists in their entirety are hereby declared to be a public record.

(e) Every manufacturer or importer of beer as defined in § 57-6-102 shall designate sales territories for each of its brands sold in Tennessee, and shall name one (1) licensed beer wholesaler in each territory who, within such territory, shall be the exclusive wholesaler for the brand or brands; provided, that if any such manufacturer or importer supplies more than one (1) brand, exclusive territories may be granted to a different wholesaler for the sale of each brand. No wholesaler shall distribute the specified brand or brands of beer outside such wholesaler's assigned territory, or shall knowingly sell to a retailer whose licensed retail establishment is located outside such wholesaler's assigned territory.

(f)(1) Within thirty (30) days after March 15, 1973, or within ten (10) days prior to the introduction of a new brand of beer in a territory, each manufacturer or importer shall submit to the commissioner, in duplicate, a sworn affidavit containing a description of the geographical boundaries of each territory for each brand of its products, the name and address of the wholesaler and the notarized signature of the wholesaler. Territories in effect on February 1, 1973, and those territories established for new brands entering the market subsequent to that date, shall constitute the exclusive sales territory for the brands and wholesalers involved. Should a manufacturer or importer desire to change wholesalers, or in any way alter the

territory of a wholesaler for any brand, such manufacturer or importer shall file with the commissioner and each wholesaler involved, not less than ninety (90) days prior to the effective date of such change, a notarized notice of intent, in duplicate, containing:

(A) A description of the geographical boundaries of the proposed territory;

(B) The name and address of the wholesaler currently distributing such brand or brands in the territory;

(C) The name and address of the proposed wholesaler and the notarized signature of the proposed wholesaler; and

(D) The name and address of all persons or firms having a financial interest in the proposed wholesale business.

(2) The ninety-day waiting period shall be waived if the proposed change is agreeable to all parties involved.

(g) The designated territory of beer wholesalers shall be deemed to be a matter of public record, and a copy shall be made available upon request to the commissioner.

(h) A violation of this section is a Class C misdemeanor.

History.

Acts 1953, ch. 76, § 5 (Williams, § 1051.22); Acts 1969, ch. 171, § 2; 1973, ch. 6, § 3; 1974, ch. 571, § 1; T.C.A. (orig. ed.), § 57-305; Acts 1986, ch. 524, §§ 2, 3; 1987, ch. 75, § 1; 1989, ch. 13, § 1; 1989, ch. 591, § 113; 1990, ch. 617, § 1; 1990, ch. 618, § 13; 1995, ch. 89, § 1; 1998, ch. 857, §§ 2, 3; 2002, ch. 856, § 1d; 2005, ch. 499, §§ 10-14.

Compiler's Notes.

Acts 2002, ch. 856, § 10, effective July 4, 2002, provided that notwithstanding any provision of law to the contrary, the commissioner of revenue is authorized to waive tax liability and associated interest and penalties otherwise imposed for failure to pay taxes levied pursuant to that act in a timely manner, but only to the extent that the taxpayer or vendor can demonstrate, to the commissioner's satisfaction, that the taxpayer's or vendor's noncompliance with the requirements of the act unavoidably and directly resulted from the close proximity of the effective date of the act with implementation of the increase in tax rates or items or activities taxed pursuant to the provisions of the act. Section 14(j) of the act provided that § 10 be repealed effective September 2, 2002.

Acts 2002, ch. 856, § 13 provided that no expenditure of public funds pursuant to that act shall be made in violation of the provisions of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. § 2000d.

Cross-References.

Mandatory suspension for violation of this section, § 57-6-114(b).

Penalty for Class C misdemeanor, § 40-35-111.

57-6-105. Records and reports.

(a) The department shall promulgate rules and regulations covering reports to be made, records to be kept, and other matters pertaining to the administration and enforcement of this part.

(b) Without limitation as to other matters to be covered, such rules and regulations shall require each wholesaler to report monthly to the department the quantities of the wholesale sales, broken down by unit prices and sizes and types of containers, within each county and municipality in which the wholesaler does business, and to send the tax collecting official of each county and municipality a copy of this report; provided, that wholesalers shall not be required to report sales to individual retailers.

(c) Such rules and regulations shall also require each retailer or the retailer's agent to sign a delivery ticket each time when beer is received from

a wholesaler; the wholesaler shall keep the signed original or a digital copy, and the retailer shall retain the duplicate of each such delivery ticket for at least two (2) years, subject to inspection by the department, county or municipality.

(d) Each wholesaler shall keep records showing dates of sale, unit prices, quantities, and sizes and types of containers of beer sold to each individual retailer with whom the wholesaler does business, and such records shall be retained for at least two (2) years, subject to audit by the department, and/or county and/or municipality.

History.
Acts 1953, ch. 76, § 6 (Williams, § 1051.23); T.C.A. (orig. ed.), § 57-306; Acts 1986, ch. 525, § 2; 2012, ch. 657, § 10.

57-6-106. Investigations by the department.

(a) The department on its own initiative may, or upon request of any county or municipality receiving this tax shall, make investigations to determine whether the full amount of tax imposed by this part has been paid, providing that any county or municipality requesting such investigation may designate an agent to participate in the investigation. For this purpose, wholesalers and retailers shall make their books and records with respect to beer purchases, sales and inventories available for inspection and audit at all reasonable business hours, and shall furnish any information with respect to beer purchases, sales and inventories required by the department. The results of such investigations shall be reported to counties and municipalities concerned.

(b) The department, upon request of any county or municipality concerned, shall provide information available in the department with respect to the administration of this part, including the amount of tax collected and remitted, within the county or municipality.

History.
Acts 1953, ch. 76, § 8 (Williams, § 1051.25); T.C.A. (orig. ed.), § 57-308.

Law Reviews.
Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

57-6-107. Wholesaler's bond — Collection of delinquent taxes — Penalties.

(a) Every wholesaler shall furnish an indemnity or personal bond, satisfactory to the department and payable to the department, as agent of the counties and municipalities involved, in an amount equivalent to the amount of gross tax payable under this part, based on the wholesaler's highest month's sales in the preceding twelve (12) months or on an estimate of sales in the case of a wholesaler just commencing business. In no event shall a bond in excess of ten thousand dollars ($10,000) be required.

(b) Should any wholesaler fail or refuse to remit the tax on or before the twentieth of the month when due, the department or any county or municipality concerned may institute legal action for collection of such delinquent taxes by any method now authorized by law for the collection of delinquent privileges taxes, or by suit.

(c) In addition to the hereinabove authorized powers and penalties, the suspension and revocation powers conferred in § 57-5-108 upon county legislative bodies and other governmental bodies referred to therein are likewise conferred herein upon the commissioner, as they may relate to persons to whom certificates of registration are issued by the commissioner under § 57-5-102. Such suspension and revocation powers may be invoked for the failure of such person to file any report required by this part, or for the filing of a false or fraudulent report, or for the failure to pay tax due by any such licensee with the intent to defraud under this part and rules and regulations promulgated pursuant thereto and for no other reasons. The remedy provided by § 57-5-108 shall, likewise, be the only method of reviewing orders of the commissioner revoking or suspending such certificates of registration as authorized herein.

(d) In lieu of a corporate surety on the bond required by subsection (a), the commissioner may allow the wholesaler to secure such bond by depositing collateral in the form of a certificate of deposit as accepted and authorized by the banking laws of this state, which has a face value equal to the amount of the bond. Such collateral may be deposited with any authorized state depository designated by the commissioner. Interest on any deposited certificate of deposit shall be payable to the wholesaler who has deposited it as collateral, or to such person as the wholesaler or the certificate may direct.

(e)(1) If a wholesaler has been in continuous operation for three (3) consecutive years and during the preceding six (6) months has paid all taxes payable under this part on or before the twentieth of the month when due, then the wholesaler shall not be required to furnish any indemnity or personal bond required by this section.

(2) Any wholesaler exempted from the bonding requirement of this section who fails to pay any tax payable under this part on or before the twentieth of the month when due, shall, upon such failure, be required to furnish an indemnity or personal bond as provided in this section.

History.

Acts 1953, ch. 76, § 9 (Williams, § 1051.26); Acts 1973, ch. 6, § 4; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 57-309; Acts 1980, ch. 885, § 7; 1987, ch. 160, § 1; 1988, ch. 519, § 2; 1988, ch. 526, § 16; 1992, ch. 607, § 2; 1996, ch. 641, § 7.

Compiler's Notes.

Acts 1988, ch. 526, § 45 provided that the amendment by that act shall apply to all assessments of penalty made on or after January 1, 1989.

NOTES TO DECISIONS

1. Action on Bond.

In suit by state against estate of surety on bond executed under this section, court held that state's claim was that of a tax and not for debt owed, and that T.C.A. § 67-1-1501 was appropriate statute of limitations. In re Estate of Darwin, 503 S.W.2d 511, 1973 Tenn. LEXIS 443 (Tenn. 1973).

57-6-108. Cash sales only to retailers.

In order to effectively collect the tax levied by this part all sales of beer by wholesalers to retailers or any other persons, except sales to duly licensed wholesalers and sales within military installations as set out in § 57-6-111, shall be for cash only. The intent of this section is that wholesale sale of beer

and delivery and payment therefor shall be a simultaneous transaction, and any maneuver, device or method of extending credit is expressly prohibited.

History.
Acts 1953, ch. 76, § 10 (Williams, § 1051.27); T.C.A. (orig. ed.), § 57-310.

NOTES TO DECISIONS

Analysis

1. Extension of Credit.
2. Legislative Intent.

1. Extension of Credit.
Note executed by retail beer dealer and payable to wholesale beer dealer whereby wholesaler extended credit to retailer was for an illegal consideration and unenforceable as being in violation of this section. Mascari v. Raines, 220 Tenn. 234, 415 S.W.2d 874, 1967 Tenn. LEXIS 403 (1967).

2. Legislative Intent.
The intent of the legislature in passing the Wholesale Beer Tax Act was not only to effectively collect the tax levied but also to regulate and prohibit certain trade practices such as the wholesale sale of beer on credit to retailers or any other persons not excepted by the statute. Mascari v. Raines, 220 Tenn. 234, 415 S.W.2d 874, 1967 Tenn. LEXIS 403 (1967).

57-6-109. Breakage and shortage adjustments only at time of delivery — Quality control.

(a) In order to accurately determine the tax to be paid, no wholesaler shall make any reduction or adjustment for loss due to shortages or damaged or broken containers, except for the actual loss from the time the beer leaves the brewery until it is delivered to the retailer.

(1) Such reductions or adjustments shall not exceed one-half of one percent (0.5%) of the total monthly purchases of each wholesaler, except in cases of fire, storms, acts of God or unavoidable accidents.

(2) Any claims in excess of one-half of one percent (0.5%) must be substantiated by sworn statements of at least two (2) witnesses or persons otherwise familiar with the facts concerning such loss.

(3) Any and all claims for such credits may be disapproved by the department of revenue.

(b) All beer shall be inspected and accepted by the retailer or the retailer's representative at the time of delivery and no adjustment or refund for damage, breakage or shortage shall be made by any wholesaler subsequent to the time of delivery to the retailer. A wholesaler may determine that beer sold to a retailer does not conform to quality control standards. Upon making that determination, the wholesaler may provide the retailer with replacement beer in exchange for the beer that no longer conforms to quality control standards, if the tax paid on the total amount of replacement beer is equal to the tax credit received on the beer being returned by the retailer.

(c) A wholesaler may purchase full case lots of beer previously sold to a retailer by the wholesaler at the price at which the beer was sold to the retailer:

(1) Upon determination by a county or municipality that:

(A) A retailer has surrendered or abandoned its permit to sell beer;

(B) A retailer's permit to sell beer has been revoked; or

(C) A retailer's permit to sell beer has been suspended for more than

thirty (30) days; or

(2) When a retailer has in good faith discontinued business for more than thirty (30) days.

History.
Acts 1953, ch. 76, § 11 (Williams, § 1051.28); Acts 1968, ch. 628, § 1; T.C.A. (orig. ed.), § 57-311; Acts 1988, ch. 466, § 2; 1990, ch. 626, § 1.

Attorney General Opinions.
Wholesale beer tax and quality control standards determination. OAG 12-54, 2012 Tenn. AG LEXIS 54 (5/21/12).

57-6-110. Gifts or inducements to retailers — Discounts to consumers.

(a) In order to determine the exact amount of the tax and to facilitate the collection thereof, no wholesaler shall make any gift of beer or any other type of gift to any retailer, nor shall any deal be made with any retailer or any other person whereby the wholesale price of beer shall be reduced below the list price above provided for as inducement to the retailer or any other person to make larger purchases; provided, however, that a manufacturer may offer, by coupons provided by a manufacturer, a discount to the consumer to be redeemed only by the manufacturer. Neither a retailer nor a wholesaler shall participate, either directly or indirectly, in the redemption of such coupons.

(b) A violation of this section is a Class C misdemeanor.

History.
Acts 1953, ch. 76, § 12 (Williams, § 1051.29); T.C.A. (orig. ed.), § 57-312; Acts 1987, ch. 72, § 1; 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

57-6-111. Exemption of sales to armed forces installations.

The tax levied herein shall not be applicable to any beer and/or ale sold to any post exchange, ship service store, commissary, open mess, officers' club, N.C.O. club or other organization recognized by and located on any fort, base, camp or post of the armed forces of the United States. Wholesalers and brewers duly licensed in Tennessee shall be relieved of the tax imposed herein on all beer and/or ale sold at any fort, base, camp or post of the armed forces of the United States; provided, that such sales are listed on the monthly reports required herein; and provided further, that a copy of a receipt duly signed by the officer or noncommissioned officer in charge of such clubs, certifying that such beer or ale was sold to and delivered to such clubs at such fort, base, camp or post, is attached to such report.

History.
Acts 1953, ch. 76, § 13 (Williams, § 1051.30); T.C.A. (orig. ed.), § 57-313.

Cross-References.
Exemption from state privilege tax, § 57-5-208.

57-6-112. Exclusiveness of tax.

Any county or municipality which collects the tax as provided herein shall not be authorized to levy any other sales tax, inspection fee or special tax of any type or kind except the privilege license fee authorized by chapter 5 of this title on the sale of beer either at retail or wholesale.

History.
Acts 1953, ch. 76, § 14 (Williams, § 1051.31); T.C.A. (orig. ed.), § 57-314.

57-6-113. Enforcement of law.

Municipal and county officials are given the authority to and are charged with the responsibility of enforcing this part as well as the department.

History.
Acts 1953, ch. 76, § 15 (Williams, § 1051.32); T.C.A. (orig. ed.), § 57-315.

57-6-114. Criminal penalties.

(a) A violation of this part is a Class C misdemeanor.

(b) It shall be mandatory on the local beer board to suspend the license or permit of the wholesaler for thirty (30) days for violating § 57-6-104, within the city or county where the violation was committed.

History.
Acts 1953, ch. 76, § 16 (Williams, § 1051.33); Acts 1969, ch. 171, § 3; T.C.A. (orig. ed.), § 57-316; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

57-6-115. Damaged or unaccepted goods — Tax liability.

When any common carrier transporting beer to a point within this state, or any insurance company insuring such beer, comes into possession of such beer by virtue of the same being damaged or otherwise unaccepted by the consignee of such beer, such common carrier or insurance company shall become liable for the tax imposed under this part, unless proof deemed satisfactory to the commissioner of revenue is furnished to the commissioner by such carrier or insurer showing that such beer has been destroyed or shipped to a point without this state and, therefore, has not been sold or consumed in this state.

History.
Acts 1971, ch. 150, § 1; T.C.A., § 57-320.

57-6-116. Expenses of enforcement of law limited.

For the purpose of carrying out this part, the commissioner of revenue is authorized to transfer from any funds allocated for the operation of the department, the sum of five thousand dollars ($5,000), which sum shall be repaid out of funds received under this part. In no event shall the department be called upon to render greater services or expend funds in excess of the amount received by the department as provided herein.

History.
Acts 1953, ch. 76, § 17 (Williams, § 1051.34); impl. am. Acts 1959, ch. 9, § 14; T.C.A. (orig. ed.), § 57-317.

57-6-117. Construction of law — Invalidity.

If any clause, sentence, paragraph or section of this part be declared unconstitutional by any court of competent jurisdiction, such determination

shall render invalid the remaining part of the part, it being hereby declared to be the legislative intent not to enact the part unless that part so held invalid was included therein.

History.
Acts 1953, ch. 76, § 18 (Williams, § 1051.35); T.C.A. (orig. ed.), § 57-318.

57-6-118. Effect of unconstitutionality of part.

In the event this part is declared unconstitutional, it is declared to be the legislative intent not to have repealed Acts 1951, ch. 37, and such act shall, in that event, be in full force and effect.

History.
Acts 1953, ch. 76, § 19 (Williams, § 1051.36); T.C.A. (orig. ed.), § 57-319.

PART 2

WHOLESALE TAX ON OTHER ALCOHOLIC BEVERAGES

57-6-201. Tax levy — Enforcement — Disposition of collections.

(a) There is imposed an additional tax upon the sale of alcoholic beverages at wholesale in the amount of fifteen cents (15¢) per case for each case of alcoholic beverages sold at wholesale in Tennessee. The tax imposed herein shall be paid monthly by the wholesaler upon the number of cases of alcoholic beverages sold by the wholesaler during the preceding month to the department, and all of which tax shall be used or spent by the alcoholic beverage commission.

(b) For the purpose of enforcing this part and ascertaining the amount of tax due under this section, it shall be the duty of each wholesaler, on or before the fifteenth day of each month, to file a report with the commissioner upon forms prescribed, prepared and furnished by the commissioner showing information relative to sales and disposition of all alcoholic beverages and such other related information as the commissioner may require.

(c) Every distiller, rectifier, vintner and importer selling distilled spirits or wines to licensed wholesalers in Tennessee shall, at the time such alcoholic beverages are invoiced to the wholesaler, send a duplicate invoice to the commissioner, to which there shall be attached copies of all papers, exhibits, etc., as may be attached to the original invoice.

(d) All moneys collected under this section shall be turned over to the state treasurer for deposit in the general fund, the money to be appropriated for expenditures by the general assembly.

History.
Acts 1959, ch. 278, § 1; 1963, ch. 259, §§ 1, 3; 1970, ch. 371, § 2; 1975, ch. 31, § 1; 1975, ch. 275, § 1; T.C.A., § 57-706; Acts 1980, ch. 885, § 8; 1988, ch. 526, § 17.

Compiler's Notes.
Acts 1988, ch. 526, § 45 provided that the amendment by that act shall apply to all assessments of penalty made on or after January 1, 1989.

Law Reviews.

Preferences, Priorities, and Powers of the State in the Collection of Delinquent Revenue: Tennessee's Tax Enforcement Procedures Act (Donald J. Serkin), 8 Mem. St. U.L. Rev. 707.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Construction with Other Law.

1. Constitutionality.

Where Acts 1975, ch. 31 had the single purpose of repealing former pricing statutes on alcoholic beverages and where it also necessarily amended the wholesaler liquor tax provided for in this section, the caption of the act was not unconstitutionally narrower than the body of the act where it stated that it was to repeal former §§ 57-701 — 57-705 relative to price regulations on alcoholic beverages. State ex rel. Blanton v. Durham, 526 S.W.2d 109, 1975 Tenn. LEXIS 592 (Tenn. 1975).

2. Construction with Other Law.

Since this section deals with wholesalers only, it does not preempt T.C.A. § 57-3-501 which deals with retailers only. Memphis Retail Liquor Dealers' Asso. v. Memphis, 547 S.W.2d 244, 1977 Tenn. LEXIS 555 (Tenn. 1977).

57-6-202. Audits and investigations — Penalty for noncompliance.

(a) The commissioner shall cause to be made a complete audit of each wholesaler at such time as may be deemed advisable for the collection of the taxes levied in this title.

(b) The commissioner is authorized to examine the books, papers and records of any wholesaler or retailer, subject to this part, for the purpose of enforcing the collection of the tax herein levied. Any refusal to permit the examination of such books, papers and records shall constitute sufficient reason for the revocation or suspension of any license or permit issued pursuant to this part or a refusal to issue the same.

History.

Acts 1959, ch. 278, § 1; 1970, ch. 361, § 3; 1975, ch. 31, § 1; T.C.A., § 57-707; Acts 1983, ch. 476, § 1; 1988, ch. 958, § 2.

Law Reviews.

Preferences, Priorities, and Powers of the State in the Collection of Delinquent Revenue: Tennessee's Tax Enforcement Procedures Act (Donald J. Serkin), 8 Mem. St. U.L. Rev. 707.

CHAPTER 7

[RESERVED]

CHAPTER 8

[RESERVED]

CHAPTER 9

DISPOSITION

Part 1. General Provisions

Section
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57-9-102. Arrest of persons implicated in manufacture.
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57-9-119. No disposition prior to time for filing claim.
57-9-120. Possession of liquor is prima facie evidence of unlawful transportation, reception, and possession.
57-9-121. Violation of preceding sections — Penalty.

Part 2. Unstamped Beverages — Unlicensed Dealers

57-9-201. Beverages owned, possessed or sold by unlicensed persons deemed contraband — Untaxed alcoholic beverages — Seizure and sale — Vehicles subject to confiscation.
57-9-202. Procedure for seizing contraband property — Claims — Hearings.
57-9-203. Review of action of commission — Appeal to supreme court.
57-9-204. Forfeiture of unclaimed property — Exclusivity of remedy.
57-9-205. Employment of aides and assistants by commission — Disposition of revenues.
57-9-206. Employees authorized to carry arms — Execution of search warrants.

PART 1

GENERAL PROVISIONS

57-9-101. Destruction of liquor and paraphernalia.

(a) It is the duty of all sheriffs and deputy sheriffs of the different counties of the state and the police officers of each incorporated city and town to search for, seize and capture all illicit distilleries, stills and worms, distilling and fermenting equipment and apparatus and other paraphernalia connected therewith, or used or to be used in the illicit manufacture of intoxicating liquors; raw materials and substances connected with or to be used in the illicit manufacture of intoxicating liquors; and containers connected with or used in the packaging of illicitly manufactured intoxicating liquors.

(b) It is the duty of such officer or officers to destroy any and all whiskey, beer, or other intoxicants found at or near such distilleries or stills except with respect to intoxicating liquors upon which federal tax has been paid as provided in § 57-9-115.

(c) It is the duty of such officer or officers capturing such distilleries, stills, distilling and fermenting equipment and apparatus and other paraphernalia, to summarily destroy and render useless such property. Any intoxicants or other articles of personal property destroyed under authority of this section shall be destroyed in the presence of at least two (2) credible witnesses. Within five (5) days after such destruction, the officer destroying such intoxicants or other articles shall file a written statement, listing all items destroyed, signed by the officer destroying and the witness or witnesses thereto, with the circuit

or criminal court clerk of the county where seized and, in addition, shall file a copy thereof with the alcoholic beverage commission.

(d) The reference to sheriffs and deputy sheriffs in this section shall also include constables in counties of this state having a population of:

not less than	nor more than
3,700	4,700
6,000	7,800
8,400	8,500
8,535	8,540
9,200	9,570
10,770	10,780
11,512	11,550
11,700	11,900
12,000	13,000
14,500	14,600
15,300	15,500
15,750	16,000
17,000	17,350
18,000	18,200
18,300	18,900
19,000	19,100
21,000	21,500
21,600	22,300
23,200	23,350
23,355	23,391
23,391	23,450
23,500	23,750
24,000	24,255
25,600	27,500
27,900	28,000
28,555	28,600
29,250	31,250
31,260	33,000
33,700	34,000
35,480	41,800
41,900	50,000
57,550	59,400
59,500	60,050
60,600	62,000
64,000	65,000
101,000	118,400
118,700	200,000

according to the 1960 federal census or any subsequent federal census, and Fentress County and Hamblen County.

History.

Acts 1919, ch. 20, § 1; Shan. Supp., § 6798a19b18; Code 1932, § 11239; Acts 1969, ch. 160, § 3; 1969, ch. 319, §§ 3, 4; 1970, ch. 456, § 1; 1970, ch. 496, § 1; 1970, ch. 588, §§ 1, 2; 1971, ch. 53, §§ 1-3; 1971, ch. 231, §§ 1, 2; 1972, ch. 584, § 1; 1972, ch. 672, § 1; 1973, ch. 389, § 1; 1974, ch. 631, §§ 1, 2; Private Acts 1976, ch. 242, § 1; Private Acts 1976, ch. 293; Acts 1977, ch. 239, § 5; T.C.A. (orig. ed.), § 57-601; Acts 1982, ch. 881, § 1; 1991, ch. 9, § 8; 1992, ch. 973, § 6; Private Acts 1994, ch. 191, § 4; Acts 1996, ch. 553, § 5; 1996, ch. 753, § 5.

Compiler's Notes.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 1996, ch. 753, § 1 abolished the office of constable, effective in any county having a population of not less than thirty-one thousand one hundred (31,100) nor more than thirty-one thousand four hundred (31,400) according to the 1990 federal census or any subsequent federal census, upon adoption of a resolution by July 15, 1996, by a two-thirds (⅔) vote of the county legislative body of such county. The section as set out above reflects the amendment by ch. 753.

Cross-References.

Constables, counties in which office abolished, § 8-10-101.

Law Reviews.

Preferences, Priorities, and Powers of the State in the Collection of Delinquent Revenue: Tennessee's Tax Enforcement Procedures Act (Donald J. Serkin), 8 Mem. St. U.L. Rev. 707.

57-9-102. Arrest of persons implicated in manufacture.

It shall be the duty of such officer to make arrests of any and all persons implicated, aiding or abetting in the manufacture of intoxicating liquors, and take them before the proper officials and have them tried upon such charge.

History.

Acts 1919, ch. 20, § 3; Shan. Supp., § 6798a19b20; Code 1932, § 11241; T.C.A. (orig. ed.), § 57-603.

57-9-103. Officers to take into possession intoxicating liquors held or transported illegally.

All sheriffs, deputy sheriffs, and police officers of the state are hereby empowered and required to take into possession any intoxicating liquors, including wine, ale, and beer, which have been received by, or are in possession of, or are being transported by, any person in violation of any law of this state; provided, however, that the reference to "sheriffs, deputy sheriffs, and police officers" in this section also includes "constables" in those counties of this state enumerated in § 57-9-101.

History.

Acts 1919, ch. 50, § 1; Shan. Supp., § 6798a19b1; Code 1932, § 11224; Acts 1969, ch. 160, § 3; 1969, ch. 319, §§ 3, 4; T.C.A. (orig. ed.), § 57-604.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 28.

NOTES TO DECISIONS

Analysis

1. Nature of Statute.
2. Type of Proceedings.
3. Effect of Other Statutes.
4. Authority of Sheriff.
5. Jury Question.

1. Nature of Statute.

This and the following sections are police measures. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

2. Type of Proceedings.

The proceedings under this and the following sections are in rem and the court will retain jurisdiction of the res until it determines the proper disposition to make thereof. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

3. Effect of Other Statutes.

Chapter 3 did not repeal in toto the provisions of this and the following sections relating to the seizure and holding of intoxicating liquors by the sheriff or other peace officers as that provision only related to the seizure of liquors or vehicles transporting them in violation of chapter 3 and did not cover the whole grounds covered by this and the following sections. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

4. Authority of Sheriff.

Where seizure of intoxicating liquors and truck in which they were contained was under the general authority conferred on the sheriff by this and the following sections and not under the provisions of the revenue statutes of the state, the seizure of the truck was without authority and the court could not direct its holding. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

5. Jury Question.

Where the jury evidently did not believe appellant's evidence as to the reason for taking the six gallons of moonshine from the undercover employee's home, there was no error in overruling appellant's motion for acquittal. United States v. Murphy, 471 F.2d 676, 1972 U.S. App. LEXIS 6830 (6th Cir. Tenn. 1972).

57-9-104. Officers to file written statement about intoxicants taken.

Every such officer so taking into possession any such intoxicating liquors shall, within five (5) days after so doing, file with the circuit or criminal court clerk of the county wherein the same was taken into possession, a written statement showing the kind and quantity of intoxicating liquors so taken, and the name or names of the person from whom the same was taken, if the name of such person be known to such officer.

History.

Acts 1919, ch. 50, § 2; Shan. Supp., § 6798a19b2; Code 1932, § 11225; T.C.A. (orig. ed.), § 57-605.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 28.

NOTES TO DECISIONS

Analysis

1. Presumption of Filing Statement.
2. Sufficiency of Indictment.
3. Failure to Make Out Statement.

1. Presumption of Filing Statement.

In absence of contrary averment it will be presumed that the sheriff performed his duty in filing the statement required by this section. Nichols v. State, 181 Tenn. 425, 181 S.W.2d 368, 1944 Tenn. LEXIS 387 (1944).

2. Sufficiency of Indictment.

Indictment for failure to comply with this section should charge that defendants were officers, reference therein to this statute being insufficient to do so, but omission to so charge, not objected to, is cured by verdict of conviction. Mathis v. State, 164 Tenn. 81, 46 S.W.2d 44, 1931 Tenn. LEXIS 15 (1932).

3. Failure to Make Out Statement.

The fact that appellant failed to make out the required written report of confiscated "moonshine" could not have been used as evidence of guilt, but could have been used to prove intent when the appellant took possession of the "moonshine." United States v. Murphy, 471 F.2d 676, 1972 U.S. App. LEXIS 6830 (6th Cir. Tenn. 1972).

57-9-105. Court having jurisdiction.

In any county having more than one (1) circuit court, or both a circuit court and a criminal court, the court in such county having the jurisdiction of the indictment and trial of offenses against the liquor laws of this state shall have exclusive jurisdiction of all matters relating to the seizure and destruction of intoxicating liquors as provided in this part, and where reference is made to the circuit court or criminal court clerk it shall be deemed to refer to the county clerk of the county having such jurisdiction, and the statements required of the sheriff shall be made to the clerk or the judge of such court.

History.
Acts 1919, ch. 50, § 13; Shan. Supp., § 6798a19b13; Code 1932, § 11236; T.C.A. (orig. ed.), § 57-606.

Textbooks.
Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 26, 28.

Law Reviews.
The Tennessee Court System — Circuit Court (Frederic S. Le Clercq), 8 Mem. St. U.L. Rev. 241.

57-9-106. Delivery of seized liquor to sheriff.

Every officer, other than the sheriff, taking into possession intoxicating liquors as provided for in § 57-9-103, shall within five (5) days after so doing, deliver the intoxicating liquors to the sheriff of the county wherein the same was taken into possession, and the sheriff shall execute to the officer a receipt for same in writing showing the kind and quantity of intoxicating liquors so delivered, and the name or names of the person from whom the intoxicating liquors were taken, if such name be known to the officer.

History.
Acts 1919, ch. 50, § 3; Shan. Supp., § 6798a19b3; Code 1932, § 11226; T.C.A. (orig. ed.), § 57-607.

NOTES TO DECISIONS

Analysis

1. Presumption of Delivery of Liquor.
2. Officer Retaining Liquor.
3. Sufficiency of Indictment.

1. Presumption of Delivery of Liquor.
In absence of contrary averment it will be presumed that the officers delivered the liquor to the sheriff as required by this section. Nichols v. State, 181 Tenn. 425, 181 S.W.2d 368, 1944 Tenn. LEXIS 387 (1944).

2. Officer Retaining Liquor.
Constable who by order of magistrate retained liquor seized under search warrant issued under grounds (2), (3), and (4) of T.C.A. § 40-6-102 was not liable under indictment charging him with failing to turn liquor over to sheriff within five days pursuant to this section since it was duty of magistrate to retain the liquor under § 40-513 (repealed). State v. Yearwood, 169 Tenn. 181, 83 S.W.2d 894, 1935 Tenn. LEXIS 28 (1935).

Where appellant seized six gallons of moonshine but did not report it or deliver it to the proper official, there was no merit in contention that the appellant did not know of these requirements. United States v. Murphy, 471 F.2d 676, 1972 U.S. App. LEXIS 6830 (6th Cir. Tenn. 1972).

3. Sufficiency of Indictment.
Indictment for failure to comply with this section should charge that the defendants were officers, reference therein to this statute being insufficient to do so, but omission to so charge, not objected to, is cured by verdict of conviction. Mathis v. State, 164 Tenn. 81, 46 S.W.2d 44, 1931 Tenn. LEXIS 15 (1932).

57-9-107. Sheriff to keep intoxicants until otherwise ordered by court.

The sheriff shall safely keep in possession all intoxicating liquors, either taken by the sheriff as provided in § 57-9-103 or delivered to the sheriff as provided in § 57-9-106 until ordered to dispose of same by the court as hereinafter provided.

History.
Acts 1919, ch. 50, § 4; Shan. Supp., § 6798a19b4; Code 1932, § 11227; T.C.A. (orig. ed.), § 57-608.

Textbooks.
Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 28.

NOTES TO DECISIONS

Analysis

1. Duty of Sheriff.
2. Disposition of Liquor.

1. Duty of Sheriff.

It is the duty of a sheriff to deliver liquors seized by the sheriff to the department of finance and taxation (now department of revenue) only when the sheriff is acting as agent or representative of that department. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

2. Disposition of Liquor.

Where the sheriff seizes liquor under the authority as a police officer and not as an agent or representative of the commissioner of finance and taxation (now commissioner of revenue) such liquors remain in the sheriff's custody until it is determined by the court whether or not they were legally in the possession of the person from whom they were seized; and if at that time they are found to be contraband goods the court might then properly entertain an application by the commissioner to possess the goods and sell them for the benefit of the treasury. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

57-9-108. Sheriff's statement of intoxicants held.

At each term of the circuit or criminal court, the sheriff shall deliver to the circuit or criminal court judge holding same a written statement showing all intoxicating liquors in the sheriff's possession, setting forth the kind and quantity of same and the name of the person from whom the same have been taken, if such name is known to the sheriff, and where the name of such person is unknown to the sheriff, such statement shall set out the date of the posting of the notice required by § 57-9-110.

History.

Acts 1919, ch. 50, § 7; Shan. Supp., § 6798a19b7; Code 1932, § 11230; T.C.A. (orig. ed.), § 57-609.

57-9-109. Notice to owners.

The filing of the statement, set out in § 57-9-104, shall be the only notice that is necessary to be given to the person from whom such liquors were taken, where the person resides within the jurisdiction of the court or where the person was arrested at the time of the seizure of such liquors.

History.

Acts 1919, ch. 50, § 5; Shan. Supp., § 6798a19b5; Code 1932, § 11228; T.C.A. (orig. ed.), § 57-610.

57-9-110. Notice when name of owner unknown.

If the name of the person transporting, receiving or possessing intoxicating liquors which have been seized in accordance with this part be unknown to the sheriff or other officer seizing the same, then, in that event, the sheriff or other officer taking possession of the same shall so certify in the statement required to be filed by § 57-9-104, and the clerk of such circuit or criminal court shall give notice to whom it may concern by notice posted at the courthouse door of the county within which such liquors were seized, setting forth in substance that such liquors have been seized in accordance with this part, and notifying all persons claiming same to do so within thirty (30) days from the date of the posting of such notice, and that if they fail to do so, they will forfeit all right in and to the same and that condemnation and forfeiture thereof will be in the nature of proceedings in rem.

History.
Acts 1919, ch. 50, § 6; Shan. Supp., § 6798a19b6; Code 1932, § 11229; T.C.A. (orig. ed.), § 57-611.

57-9-111. Claimants of liquor — Petition.

All persons claiming any interest in intoxicating liquors seized in accordance with this part shall do so by petition, which petition shall be filed in the circuit or criminal court of the county in which such liquors were seized, within ten (10) days after the filing of the statement showing the seizure thereof required in § 57-9-104; provided, however, that persons for whom advertisement is made by notice as herein required may file such petition within the time set out in such notice. It shall be the duty of the sheriff to ascertain what notices have been posted by the clerk in accordance with this part and make return thereof to the court as hereinbefore provided.

History.
Acts 1919, ch. 50, § 8; Shan. Supp., § 6798a19b8; Code 1932, § 11231; T.C.A. (orig. ed.), § 57-612.

Textbooks.
Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 28.

Law Reviews.
Constitutional Law — Right to Trial by Jury in a Summary Proceeding, 14 Tenn. L. Rev. 363.

NOTES TO DECISIONS

Analysis

1. Effect of Other Statutes.
2. Time of Filing Petition.
3. Repossession of Beer.

1. Effect of Other Statutes.
Ch. 5, part 1 of this title, regulating storage and possession of beer, did not repeal this section outlining procedure for recovery of seized beer by owners. Young v. Chumley, 189 Tenn. 322, 225 S.W.2d 77, 1949 Tenn. LEXIS 432 (1949).

2. Time of Filing Petition.
Proceeding by plaintiff to recover possession of whiskey filed after the plaintiff's acquittal on charge of unlawful possession of intoxicating liquor and more than six months after seizure of liquor was not timely. Nichols v. State, 181 Tenn. 425, 181 S.W.2d 368, 1944 Tenn. LEXIS 387 (1944).

3. Repossession of Beer.
This section provided the only remedy available for the repossession of beer seized from one who was charged with the possession of beer for illegal sale. Young v. Chumley, 189 Tenn. 322, 225 S.W.2d 77, 1949 Tenn. LEXIS 432 (1949).

Justice of peace did not have jurisdiction of proceeding to recover beer seized by sheriff. Young v. Chumley, 189 Tenn. 322, 225 S.W.2d 77, 1949 Tenn. LEXIS 432 (1949).

57-9-112. Answer to petition claiming ownership.

It shall be the duty of the district attorney general to investigate and file answer to any petition alleging ownership of or any interest in any intoxicating liquors seized under this part, and to represent the state upon the hearing of such petition.

History.
Acts 1919, ch. 50, § 12; Shan. Supp., § 6798a19b12; Code 1932, § 11235; modified; T.C.A. (orig. ed.), § 57-613.

Law Reviews.
The Tennessee Court Systems — Prosecution, 8 Mem. St. U.L. Rev. 477.

57-9-113. Petition claiming ownership tried in summary manner.

The hearing of such petition shall be had in a summary manner, before the court sitting without a jury.

History.
Acts 1919, ch. 50, § 14; Shan. Supp., § 6798a19b14; mod. Code 1932, § 11237; T.C.A. (orig. ed.), § 57-614.

Law Reviews.
Constitutional Law — Right to Trial by Jury in a Summary Proceeding, 14 Tenn. L. Rev. 363.

NOTES TO DECISIONS

Analysis

1. "Summary Proceeding" Defined.
2. Refusal of Jury Proper.

1. "Summary Proceeding" Defined.
A summary proceeding is a form of trial in which the established course of legal proceeding is disregarded, especially in the matter of trial by jury. Caneperi v. State, 169 Tenn. 472, 89 S.W.2d 164, 1935 Tenn. LEXIS 72 (1936).

2. Refusal of Jury Proper.
In view of this section, no constitutionally secured rights were denied by a refusal of a jury in a proceeding for return of liquor seized by sheriff. Caneperi v. State, 169 Tenn. 472, 89 S.W.2d 164, 1935 Tenn. LEXIS 72 (1936).

57-9-114. Determination of claims to liquor.

Where any person claims an interest in any liquor seized in accordance with this part, the court shall hear and determine the question of the right of such person so claiming an interest in such liquors; but no person shall be deemed to have any property right in any intoxicating liquors transported, received, or possessed in violation of the laws of this state; and if the court, upon the hearing of any petition alleging ownership of, or an interest in intoxicating liquors, shall ascertain that the same have been received, transported or possessed in violation of any law of this state, the court shall direct the sale or destruction thereof by the sheriff as set out in §§ 57-9-115 — 57-9-119.

History.
Acts 1919, ch. 50, § 10; Shan. Supp., § 6798a19b10; Code 1932, § 11233; Acts 1947, ch. 127, § 2; C. Supp. 1950, § 11233; T.C.A. (orig. ed.), § 57-615.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Jurisdiction.
3. Trial.
4. Evidence.
5. —Sufficiency.
6. Disposition of Charges Against Persons Transporting Liquor.
7. Denial of Motion for Return of Beverages.
8. Disposition of Liquor.

1. Constitutionality.
The 1947 amendment to this section was constitutional. Petition of Carter, 188 Tenn. 677, 222 S.W.2d 11, 1949 Tenn. LEXIS 389 (1949).

2. Jurisdiction.
Justice of peace did not have jurisdiction of proceeding to recover beer seized by sheriff. Young v. Chumley, 189 Tenn. 322, 225 S.W.2d 77, 1949 Tenn. LEXIS 432 (1949).

3. Trial.
The petitioner in a proceeding for the return of intoxicating liquor seized by a sheriff, as being illegally transported, is not entitled to a jury trial. Caneperi v. State, 169 Tenn. 472, 89 S.W.2d 164, 1935 Tenn. LEXIS 72 (1936).

4. Evidence.
In a proceeding for the return of liquor seized by a sheriff as being illegally transported, it was not error to admit testimony of a witness who knew the persons designated on the packages and their reputations, as against the objection that it was hearsay evidence. Caneperi v. State, 169 Tenn. 472, 89 S.W.2d 164, 1935 Tenn. LEXIS 72 (1936).

5. —Sufficiency.

Where a sheriff seized and held intoxicating liquor on the ground that it was being illegally transported, a finding of the trial court that the liquor in question was being illegally transported will not be disturbed on appeal, in view of evidence of bogus documents to support the claim of interstate shipment, and of markings on packages designating Tennessee bootleggers as assignees, and repudiation of the parties. Caneperi v. State, 169 Tenn. 472, 89 S.W.2d 164, 1935 Tenn. LEXIS 72 (1936).

6. Disposition of Charges Against Persons Transporting Liquor.

Where a sheriff seized and held intoxicating liquor on the ground that it was being illegally transported, the trial judge is not bound by the verdict of not guilty in a prosecution of the persons in charge of the truck containing the liquor. Caneperi v. State, 169 Tenn. 472, 89 S.W.2d 164, 1935 Tenn. LEXIS 72 (1936).

That an indictment for illegal possession of liquor was quashed because of an illegal search and seizure, does not overcome the presumption of illegal possession raised by this section, and is no determination of the legality of the possession. Ambrester v. State, 172 Tenn. 144, 110 S.W.2d 332, 1937 Tenn. LEXIS 63 (1937).

7. Denial of Motion for Return of Beverages.

Since motion of defendant for return of beverages illegally seized, following petition alleging such illegal seizure, under which liquor was suppressed as evidence, was incidental to prosecution under the liquor laws, order denying motion could not be reviewed after dismissal of case, and an independent proceeding was necessary. Homolko v. State, 155 Tenn. 467, 295 S.W. 66, 1926 Tenn. LEXIS 68 (1927).

8. Disposition of Liquor.

Where whiskey which was in the unlawful possession of defendant was seized by the sheriff and where defendant was tried for such possession but the charges were dismissed because of illegality of the search and seizure, defendant was not entitled to the return of the whiskey since to return such whiskey to the defendant would have the effect of making the defendant a criminal. Ambrester v. State, 172 Tenn. 144, 110 S.W.2d 332, 1937 Tenn. LEXIS 63 (1937).

Liquor found to have been received, possessed, or transported in violation of the laws of this state is directed to be destroyed, unless a petition for reclamation is filed by some person claiming to have an interest therein, and if on the hearing it appears that the receipt, possession, or transportation of the liquors was unlawful, destruction is ordered, but if it appears that such receipt, possession, or transportation was lawful, necessarily the act must be construed to mean that the court should direct the restoration of the liquors to the owner. Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081, 1939 Tenn. LEXIS 122 (1940).

57-9-115. Delivery of seized liquor to alcoholic beverage commission — Sale.

(a) Any intoxicating liquors seized in accordance with this part, upon which federal tax has been paid, shall be turned over to the alcoholic beverage commission for public sale by the commissioner of general services as contraband in accordance with part 2 of this chapter.

(b) The commission, at the request of the district attorney general, shall withhold from sale and make available to the court on the day of trial, a sufficient amount of such intoxicating liquor for use as evidence and proof of the offense contained in the indictment of any person under prosecution in connection therewith.

(c) It shall be the duty of the sheriff to notify the commission in writing within ten (10) days after the seizure of such liquors, describing the brands and quantity thereof, and to turn over such liquors to the commission at the time and place designated by the commission.

(d) It shall be the responsibility of the commission to provide transportation and storage for such liquors.

(e) In the event the commission calls upon the sheriff to transport such liquors, all expenses incurred by the sheriff in the transportation of such liquors shall be borne by the commission, and the sheriff shall be allowed the same mileage fee as for transporting prisoners, in addition to the other actual cost of transportation.

(f) All money received from the sale of such liquors shall be deposited in the general fund of the state treasury; provided, that, in the case of all liquor captured or confiscated by a police officer of any incorporated municipality, the funds derived from the sale of such liquor, less ten percent (10%) to be retained by the state for costs of administration, shall be turned over to the municipality served by such police officer; and provided further, that in the case of all liquor captured or confiscated by the sheriff, deputy sheriff or constable of any county, the funds derived from the sale of such liquor, less ten percent (10%) to be retained by the state for costs of administration, shall be turned over to the county served by such sheriff, deputy sheriff or constable.

(g) Each sheriff, deputy sheriff or constable of any county or any police officer of any municipality, who has seized and confiscated any intoxicating liquors, shall make an itemized list of such beverages, showing the quantity, brand, name and size of bottle, and shall deliver a signed copy of the itemized list to the commission at the time the beverages are delivered or turned over to the commission for disposal. The agent or representative of the commission receiving the beverages shall likewise issue a receipt to such officer covering the beverages. A copy of the list of beverages prepared by the officer making the seizure and confiscation shall be delivered by the officer to the county mayor of the county if the seizure be made by a county officer, and a copy shall be furnished the mayor of the municipality if the seizure be made by a municipal officer. The commission likewise shall furnish the county mayor with a copy of the list of beverages which it has received from the particular law enforcement officer.

History.

Acts 1919, ch. 50, § 9; Shan. Supp., § 6798a19b9; Code 1932, § 11232; Acts 1947, ch. 127, § 1; C. Supp. 1950, § 11232; Acts 1955, ch. 347, § 9; impl. am. Acts 1959, ch. 9, §§ 5, 14; Acts 1959, ch. 301, § 2; impl. am. Acts 1961, ch. 97, § 5; Acts 1963, ch. 258, § 1; impl. am. Acts 1972, ch. 543, § 7; impl. am. Acts 1978, ch. 934, §§ 16, 36; modified; T.C.A. (orig. ed.), § 57-616; Acts 2003, ch. 90, § 2.

Compiler's Notes.

Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 15, 22, 28.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Evidence.
3. Power of Circuit Court to Return Contraband.

1. Constitutionality.

Provisions of this section authorizing sale of intoxicating liquor bearing federal stamps seized in dry territory is not unconstitutional on the ground that it discriminated as to federal stamped liquor since it was not such an unreasonable discrimination as to wholly invalidate a strictly police statute. Petition of Carter, 188 Tenn. 677, 222 S.W.2d 11, 1949 Tenn. LEXIS 389 (1949).

Provisions of this section as to sale of liquor seized in dry territory to any lawful retailer of liquor in counties wherein the sale of liquor has been legalized was not unconstitutional on the ground that officers required to carry out sale would be subject to public ridicule and shame. Petition of Carter, 188 Tenn. 677, 222 S.W.2d 11, 1949 Tenn. LEXIS 389 (1949).

Provisions of this section authorizing sale were not unconstitutional on ground that it appropriated property without due process of law. Petition of Carter, 188 Tenn. 677, 222 S.W.2d 11, 1949 Tenn. LEXIS 389 (1949).

2. Evidence.

Where evidence was to the effect that chief of police did not report intoxicating liquors delivered to the chief by police officer until some nine months thereafter, and delivery was under such circumstances that jury would have been justified in finding that such original intoxicating liquors were never delivered to the department (now commission), but that defendant obtained other liquors which the defendant delivered to the department because of the investigation, evidence did not preponderate against verdict of guilty of failing to account for confiscated liquors. Broyles v. State, 207 Tenn. 566, 341 S.W.2d 722, 1960 Tenn. LEXIS 493 (1960).

3. Power of Circuit Court to Return Contraband.

Where the alcoholic beverage commission seized contraband liquor from a defendant charged with illegal possession and the charge was nolle prossed, the court held that a jury verdict of acquittal was not binding on the court or the commission with regard to the disposition of the confiscated liquor, that, under T.C.A. § 57-3-411 and related statutes, a circuit court had no authority to order the return of the liquor to the defendant and that the liquor had to be sold as contraband in accordance with T.C.A. §§ 57-9-201 — 57-9-204. Alcoholic Beverage Com. v. Simmons, 512 S.W.2d 585, 1973 Tenn. Crim. App. LEXIS 225 (Tenn. Crim. App. 1973).

57-9-116. Report of sales.

All sales of liquor made as directed in §§ 57-9-115 — 57-9-119 shall be reported to the court in writing, stating the amount disposed of, the prices obtained therefor, and such other information as the court may require. If it shall appear that the sheriff has complied with the order of the court directing the sale, then such report shall be approved and entered on the minutes of the court.

History.

Acts 1947, ch. 127, § 1; C. Supp. 1950, § 11232; T.C.A. (orig. ed.), § 57-617.

57-9-117. Disposition of liquor bearing no federal tax stamp — Destruction of spoiled liquor.

Should liquor not having a federal stamp on the bottle or package be captured or taken in possession by officers, then the court shall order such liquor destroyed, or may order it turned over to federal authorities for evidence; and if it should appear that any liquor seized in accordance with this part, though having a federal stamp thereon, is not fit for consumption, the court shall order the same to be destroyed.

History.

Acts 1947, ch. 127, § 1; C. Supp. 1950, § 11232; T.C.A. (orig. ed.), § 57-618.

57-9-118. Sheriff's inventory to facilitate credit to proper jurisdiction.

It shall be the duty of the sheriff to keep separate inventories of liquor that is captured by police officers and liquor captured by other officers, so that the funds derived from the sale thereof may be properly divided between the county and incorporated city, town or municipality.

History.
Acts 1919, ch. 50, § 9; Shan. Supp., § 6798a19b9; Code 1932, § 11232; Acts 1947, ch. 127, § 1; C. Supp. 1950, § 11232; T.C.A. (orig. ed.), § 57-619.

57-9-119. No disposition prior to time for filing claim.

The court shall not order the sale or destruction of any of the liquors seized under this part until the time for filing petitions, alleging ownership thereof or an interest therein, as provided in § 57-9-111, shall have elapsed.

History.
Acts 1919, ch. 50, § 9; Shan. Supp., § 6798a19b9; Code 1932, § 11232; Acts 1947, ch. 127, § 1; C. Supp. 1950, § 11232; T.C.A. (orig. ed.), § 57-619.

57-9-120. Possession of liquor is prima facie evidence of unlawful transportation, reception, and possession.

In proceedings under this part, the possession of intoxicating liquors, except by persons expressly authorized to transport, receive, or possess the same under the laws of this state, shall be prima facie evidence that such liquors have been transported, received, or possessed in violation of the laws of this state.

History.
Acts 1919, ch. 50, § 11; Shan. Supp., § 6798a19b11; Code 1932, § 11234; T.C.A. (orig. ed.), § 57-620.

NOTES TO DECISIONS

1. Presumption of Unlawful Possession.
Under a petition to recover possession of intoxicating liquor which has been unlawfully seized, there is a presumption that petitioner's possession was illegal, and petitioner must allege and prove that the petitioner had lawful possession at the time of the seizure. Ambrester v. State, 172 Tenn. 144, 110 S.W.2d 332, 1937 Tenn. LEXIS 63 (1937).

57-9-121. Violation of preceding sections — Penalty.

(a) Any person violating any of the provisions of this part is guilty of a Class C misdemeanor.

(b) Any officer violating the provisions of this part shall also forfeit the office and be ineligible to reappointment or reelection to same for a period of five (5) years.

History.
Acts 1919, ch. 50, § 15; Shan. Supp., § 6798a19b15; Code 1932, § 11238; T.C.A. (orig. ed.), § 57-621; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

NOTES TO DECISIONS

Analysis

1. Judgment.
2. Application.

1. Judgment.
Judgment against officers on conviction of failure to report possession of liquor and deliver same to sheriff assessing fine of $250 against one defendant and $100 against another and sentencing both to the county workhouse for 30 days, and that "they be disqualified from holding the same office for five years," was proper.

Mathis v. State, 164 Tenn. 81, 46 S.W.2d 44, 1931 Tenn. LEXIS 15 (1932) (decided under prior law).

2. Application.

Portion of this section providing for forfeiture of office of any officer convicted of violating any of the provisions of this part applied to city police chief. Broyles v. State, 207 Tenn. 566, 341 S.W.2d 722, 1960 Tenn. LEXIS 493 (1960).

PART 2

UNSTAMPED BEVERAGES — UNLICENSED DEALERS

57-9-201. Beverages owned, possessed or sold by unlicensed persons deemed contraband — Untaxed alcoholic beverages — Seizure and sale — Vehicles subject to confiscation.

(a) All alcoholic beverages of more than five percent (5%) alcohol in excess of five gallons (5 gals.) that are owned or possessed by any person in any county of this state, whether or not such county has authorized the sale or distribution of alcohol within its jurisdiction, without the same having been purchased or obtained from an entity holding a license issued under § 57-3-204, § 57-3-203 or § 57-3-207, or manufactured at an entity holding a license issued under § 57-3-218, are declared to be contraband goods, and the same may be seized by the representative, agent or employee of the commission, or sheriff or deputy sheriffs of any such county, and such goods may be delivered to the alcoholic beverage commission for sale by the commissioner of general services in accordance with §§ 12-2-201 — 12-2-204. The reference to "sheriff or deputy sheriffs" in the preceding sentence also includes "constables" in those counties of this state enumerated in § 57-9-101. All alcoholic beverages, which are sold or stored in wet counties for the purpose of sale by a person who does not hold a state liquor license shall be contraband within the meaning of this part, and subject to seizure as provided herein. No bids shall be received on such contraband beverages except from persons duly licensed by the state to handle alcoholic beverages of more than five percent (5%).

(b) Any vehicle, aircraft or boat not a common carrier which may be used for transportation or storage, either in wet or dry counties, for the purpose of distribution, gift or sale of untaxed alcoholic beverages shall likewise be subject to confiscation and sale in the manner herein provided. Should any untaxed alcoholic beverages be found in any vehicle, aircraft or boat, same shall be prima facie evidence that it was there for gift, sale or distribution.

(c) Vehicles and any other articles of personal property which may be found at a still, still site, or place of storage, which still, still site or place of storage is being used by persons known or unknown who have failed to procure a state liquor license, or have failed to pay the taxes imposed by § 57-3-302 are declared to be contraband goods and shall likewise be subject to confiscation and sale in the manner herein provided; however, before any vehicle declared to be contraband, under this part, is sold as provided herein, a copy of notice of seizure shall be sent by registered mail to the owner and lienholder as of record in the motor vehicle division of the department of revenue. Such notice shall state a general description of the seized vehicle, the reasons for the seizure, the procedure by which recovery of the vehicle may be sought, including the time period in which a claim for recovery must be presented, and

the consequences of failing to file within the time period. A copy of the notice shall be filed in the office of the commission and shall be open to the public for inspection.

(d) This section shall be applicable to dry counties in like manner as to wet counties.

(e) In the case of any vehicle, aircraft, or boat not a common carrier seized by any law enforcement officer of any incorporated municipality or of any county and turned over to the commission for confiscation, fifty percent (50%) of the amount received from the sale thereof shall be paid to the municipality or to the county served by such law enforcement officer, as the case may be.

(f) The presence of alcoholic beverages at a still, still site or place of storage in excess of one gallon (1 gal.) without a bill of lading or receipt from a licensed retailer, wholesaler, winery or manufacturer shall create a rebuttable presumption that the taxes imposed by § 57-3-302 have not been paid.

History.

Acts 1941, ch. 119, § 1; C. Supp. 1950, § 6648.24 (Williams, § 6648.26); Acts 1955, ch. 347, § 5; impl. am. Acts 1959, ch. 9, § 14; Acts 1959, ch. 267, § 1; impl. am. Acts 1959, ch. 9, § 5; impl. am. Acts 1959, ch. 303, § 1; impl. am. Acts 1961, ch. 97, § 5; Acts 1963, ch. 258, § 1; 1967, ch. 72, § 1; 1969, ch. 160, § 3; 1969, ch. 319, §§ 3, 4; impl. am. Acts 1972, ch. 543, § 7; Acts 1973, ch. 357, § 1; T.C.A. (orig. ed.), § 57-622; Acts 1992, ch. 608, §§ 13-16; 2009, ch. 434, § 11; 2011, ch. 451, § 8; 2017, ch. 147, § 16.

Compiler's Notes.

The commissioner of general services, referred to in this section, was changed to chief procurement officer in §§ 12-2-201 – 12-2-204 by Acts 2011, ch. 295, §9(a), effective April 1, 2012.

Cross-References.

Certified mail in lieu of registered mail, § 1-3-111.

Forfeiture of conveyances used in theft, title 40, ch. 33.

Procedure for seizing contraband property in cases of seizure of alcoholic beverages, § 57-9-202.

Textbooks.

Tennessee Criminal Practice and Procedure (Raybin), § 18.237.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 22, 23, 26, 28.

Law Reviews.

Forfeitures Under the Tennessee Drug Control Act (Lewis L. Laska), 16 Mem. St. U.L. Rev. 431 (1986).

NOTES TO DECISIONS

Analysis

1. Purpose.
2. Confiscation of Vehicle.
3. Power of Circuit Court to Return Contraband.

1. Purpose.

The provisions of this part in regard to confiscation of vehicles used for transportation of unstamped alcoholic beverages, were enacted as a practical, effective means of preventing and detecting fraudulent use of our highways under the pretense of interstate transportation, and the purpose of the legislature was not to control its distribution in adjoining states. Dye v. McCanless, 185 Tenn. 18, 202 S.W.2d 657, 1947 Tenn. LEXIS 294 (1947).

2. Confiscation of Vehicle.

Forfeiture or confiscation of the vehicle is not automatically accomplished, nor does it necessarily take place at all, but rather the property confiscated is subject to forfeiture "in the manner herein provided." Wells v. McCanless, 184 Tenn. 293, 198 S.W.2d 641, 1947 Tenn. LEXIS 379 (1947).

A vehicle being used for the transportation of unstamped alcoholic beverages through Tennessee is subject to confiscation notwithstanding the fact that the alcoholic beverages were not for distribution, gift or sale in Tennessee. Dye v. McCanless, 185 Tenn. 18, 202 S.W.2d 657, 1947 Tenn. LEXIS 294 (1947).

Confiscation sale by commissioner could be attacked by owner in suit by owner to replevin car from purchasers at sale since order of sale by commissioner was not a judgment by a court. Brooks v. McCoy, 192 Tenn. 586, 241 S.W.2d 579, 1951 Tenn. LEXIS 305 (1951).

Where person sold unstamped whiskey to officer and officer after arrest of person searched automobile of such person 18½ feet from house, but on another's property, in which the officer found whiskey and confiscated auto-

mobile, the search of such automobile was proper. Atkins v. Harris, 202 Tenn. 489, 304 S.W.2d 650, 1957 Tenn. LEXIS 414 (1957).

Where car was found abandoned at side of road after chase, it was proper for the police officers to inspect and search the car, and liquor found in such car could be used as evidence against it. Boyd v. General Motors Acceptance Corp., 205 Tenn. 658, 330 S.W.2d 13, 1959 Tenn. LEXIS 405 (1959).

In order to confiscate a vehicle because it is used for transporting or storing intoxicating liquors in violation of law the conditions of the statute must be strictly complied with. Boyd v. Christy, 206 Tenn. 304, 333 S.W.2d 552, 1960 Tenn. LEXIS 365 (1960).

Subsection (b) of this section does not permit the confiscation of vehicles and other articles merely because found at the place or premises where illegal liquor was stored, but such vehicles and articles of personal property are subject to confiscation only where they are found at such place of illegal storage under circumstances showing that they are being used in furtherance of such illegal operation. Boyd v. Christy, 206 Tenn. 304, 333 S.W.2d 552, 1960 Tenn. LEXIS 365 (1960).

Where no liquor was found in car parked about 50 feet from locked garage in which were found nine 50-gallon barrels of whiskey which could not possibly be hauled or stored in the car, the evidence was insufficient to justify a seizure and confiscation of the car for transporting or storing unstamped alcoholic beverages. Boyd v. Christy, 206 Tenn. 304, 333 S.W.2d 552, 1960 Tenn. LEXIS 365 (1960).

Under this section a car is subject to seizure if unstamped liquor is found therein for the purpose of distribution, gift or sale, and the presence of unstamped liquor is prima facie evidence that it is for gift, sale or distribution, but when evidence is offered that the whiskey was not for distribution, gift or sale, the presumption disappears. MacFarland v. Wofford, 211 Tenn. 309, 364 S.W.2d 914, 1963 Tenn. LEXIS 351 (1963).

3. Power of Circuit Court to Return Contraband.

Where the alcoholic beverage commission seized contraband liquor from a defendant charged with illegal possession and the charge was nolle prossed, the court held that a jury verdict of acquittal was not binding on the court or the commission with regard to the disposition of the confiscated liquor, that, under T.C.A. § 57-3-411 and related statutes a circuit court had no authority to order the return of the liquor to the defendant, and that the liquor had to be sold as contraband in accordance with T.C.A. §§ 57-9-201 — 57-9-204. Alcoholic Beverage Com. v. Simmons, 512 S.W.2d 585, 1973 Tenn. Crim. App. LEXIS 225 (Tenn. Crim. App. 1973).

57-9-202. Procedure for seizing contraband property — Claims — Hearings.

(a) In all cases of seizure of any alcoholic beverages or other property subject to forfeiture under the provisions hereof, the officer or other person making the seizure shall proceed as follows:

(1) The officer or other person shall deliver to the person, if any, found in possession of such property, a receipt showing a general description of the seized goods, the reason for the seizure, the procedure by which recovery of the goods may be sought, including the time period in which a claim for recovery must be presented, and the consequences of failing to file within the time period. If the person found in possession of the seized property is not the sole unencumbered owner of same, the commission shall make a reasonable effort to furnish a copy of the receipt to the owner and/or lienholder. A copy of the receipt shall be filed in the office of the commission and shall be open to the public for inspection;

(2) All such property seized and confiscated under this part may be designated by the director for use by the commission for any period of time or shall be sold at public sale by the commissioner of general services when the same has been turned over to the commissioner by the commission as now authorized by law.

(b)(1) Any person claiming any property so seized as contraband goods may, within fifteen (15) days from the date of receipt of notification of seizure, and after executing a bond for costs with one (1) or more good and solvent

sureties in the sum of two hundred fifty dollars ($250), made payable to the state of Tennessee, file with the commission at Nashville a claim in writing, requesting a hearing and stating the person's interest in the articles seized. An indigent person may file a claim in forma pauperis by filing with the claim an affidavit stating that the indigent person is unable to bear the cost of the proceeding.

(2) The commission shall set a date for hearing within fifteen (15) days from the day the claim is filed.

(3) The commission is empowered to subpoena witnesses and compel their attendance at hearings authorized hereunder. All parties to the proceeding, including the person claiming such property, shall have the right to have subpoenas issued by the commission to compel the attendance of all witnesses deemed by such parties to be necessary for a full and complete hearing. All witnesses shall be entitled to the witness fees and mileage provided by law for legal witnesses, which fees and mileage shall be paid as a part of the costs of such proceeding.

(c) At each hearing authorized in subsection (b), the state shall have the burden of proving by a preponderance of the evidence that the seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture, under this part, and failure to carry the burden of proof shall operate as a bar to any forfeiture hereunder.

(d) In the event the ruling of the commission is favorable to the claimant, the commission shall deliver to the claimant the alcoholic beverages or property so seized. If the ruling of the commission is adverse to the claimant, the commission shall proceed as to such contraband goods in accordance with the foregoing provisions hereof. The expenses of storage, transportation, etc., shall be adjudged as a part of the cost of the proceeding in such manner as the commission shall fix.

(e)(1) Whenever, in any proceeding under this part, a claim is filed for any vehicle, aircraft or boat seized, as provided in this section, by an owner or other person asserting the interest of the owner, the commissioner shall not allow the claim unless and until the claimant proves that:

(A) The claimant has an interest in such property which the claimant acquired in good faith; and

(B) The claimant had at no time any knowledge or reason to believe that it was being or would be used in the violation of the laws of the United States or of the state of Tennessee relating to liquor.

(2) Whenever, in any proceeding under this section, a claim is filed for any property seized, as provided in this section, by a person who is the holder of a security interest or other claim arising out of a contract or agreement, the commissioner shall not allow the claim unless and until the claimant proves that such claimant has an interest in such property which such claimant acquired in good faith. An interest which is acquired in the ordinary course of business shall be presumed to be in good faith unless the commissioner receives evidence that the holder of the security interest had knowledge, at the time the interest attached, of the intended illegal use of the vehicle or was a co-conspirator in furtherance of the illegal activity. A holder of a security interest which is other than a natural person shall be considered a

co-conspirator for purposes of this section, if evidence shows that an officer, employee or agent of the holder acting within the scope of employment is a co-conspirator, and the holder either:

(A) Has actual knowledge of the illegal activities of the officer, employee or agent from an individual other than the officer, employee or agent and fails to take appropriate action; or

(B) The holder has failed to reasonably supervise or monitor the activities of the officer, employee or agent.

(3) In the event the interest of the owner is forfeited as provided in subdivision (e)(1) and the interest of the holder of a security interest is not forfeited as provided in subdivision (e)(2), the commissioner may, at the request of the holder of such interest, return the property to the holder for disposition in accordance with the applicable security agreement or other contract. If the commissioner does not return the property to the holder, the forfeiture shall be subject to the holder's interest.

(4) An owner whose interest is forfeited after being arrested for, or charged with, any felony, shall be ineligible to purchase the property from, or to bid at any sale of the property by, the commissioner or any seizing agency. The owner whose interest is forfeited after being arrested for, or charged with, any felony, shall also be ineligible to redeem the property from, or to bid at any sale of the property by, any holder of a security interest acting pursuant to the agreement contract or title 47, chapter 9.

(f) Pending any proceeding to recover a vehicle, aircraft or boat seized hereunder, the commission may order delivery thereof to any claimant who shall establish the right to immediate possession thereof, and who shall execute, with one (1) or more sureties approved by the commission, and deliver to the commission, a bond in favor of the state of Tennessee for the payment of a sum double the appraised value thereof as of the time of the hearing; and conditioned further that, if the vehicle, aircraft or boat is not returned at the time of hearing, the bond shall stand in lieu of and be forfeited in the same manner as such vehicle, aircraft or boat.

(g) The commission may personally hold such hearings as it may deem proper. In addition thereto, the commission is authorized to designate a hearing officer who may hold such hearings in the place and in the absence of the commission. Such hearing officer shall make findings of fact, conclusions of law, and proposed order based thereon. If the commission concurs, it shall issue the order; or it may, upon review of the record, make such findings, conclusions and issue such order as, in its discretion, the record justifies. At all hearings provided for herein, the commission shall provide a stenographer or court reporter to take a stenographic record of the evidence adduced at such hearing. The claimant or protestant shall be entitled to a copy of the stenographic record, upon application therefor, and upon paying the reasonable cost thereof to be fixed by the commission.

History.

Acts 1941, ch. 119, § 2; 1947, ch. 128, § 1; C. Supp. 1950, § 6648.25 (Williams, § 6648.27); Acts 1955, ch. 347, § 6; impl. am. Acts 1959, ch. 9, §§ 5, 14; Acts 1959, ch. 301, § 3; 1959, ch. 302, § 1; impl. am. Acts 1961, ch. 97, § 5; Acts 1963, ch. 258, § 1; 1967, ch. 368, § 1; 1970, ch. 451, § 3; impl. am. Acts 1972, ch. 543, § 7; Acts

1973, ch. 357, §§ 2-4; T.C.A. (orig. ed.), § 57-623; Acts 1985, ch. 76, § 3; 1990, ch. 1037, §§ 2, 5.

Cross-References.

Procedure for confiscation of property in cases of seizure of narcotic drugs or marijuana, § 53-11-201.

Procedure for seizing contraband in cases of seizure of tobacco products, § 67-4-1021.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 26, 28.

Law Reviews.

An Examination of the Tennessee Law of Administrative Procedure (George Street Boone), 1 Vand. L. Rev. 339.

NOTES TO DECISIONS

Analysis

1. Construction — Effect of Federal Decisions.
2. Confiscation — Necessity of Compliance With Prescribed Conditions.
3. —Facts Excusing Failure to Comply With Conditions.
4. —Return on Acquittal.
5. Void Sale by Commissioner.
6. Attack on Judgment of Commissioner.
7. Inquiry by Claimant.
8. Presumption of Knowledge by Claimant.
9. Reclaiming Confiscated Car.

1. Construction — Effect of Federal Decisions.

While the holdings of the federal courts are not binding on the state Supreme Court in construing this section, they were strongly persuasive where the federal statute was identical to this statute. Dolen v. State, 181 Tenn. 31, 178 S.W.2d 387, 1944 Tenn. LEXIS 342 (1944).

2. Confiscation — Necessity of Compliance With Prescribed Conditions.

The procedure laid down in this section constitutes the conditions under which the confiscation is accomplished, and the proceeding is conditioned upon compliance with the conditions prescribed. Wells v. McCanless, 184 Tenn. 293, 198 S.W.2d 641, 1947 Tenn. LEXIS 379 (1947).

Seizure of car on charge of use in transporting unstamped liquors did not result in forfeiture where statutory procedure for forfeiture was not followed. Wells v. McCanless, 184 Tenn. 293, 198 S.W.2d 641, 1947 Tenn. LEXIS 379 (1947).

Where the commissioner did not comply with the conditions under which alone the confiscation of the petitioner's automobile could be accomplished, in that the petitioner denied the hearing to which the petitioner was entitled prior to a sale, the confiscation of the automobile did not occur and title remained in the petitioner. Brooks v. McCoy, 192 Tenn. 586, 241 S.W.2d 579, 1951 Tenn. LEXIS 305 (1951).

Where sheriff upon seizure of car containing unstamped liquor, failed to issue receipt for property taken to person found in possession and commissioner failed to advertise property taken, and sheriff turned car over to federal authorities who 64 days later turned the car over to the commissioner, the latter was not entitled to confiscate car since sheriff acted for federal authorities and not as agent of commissioner, and statutory procedure required for confiscation had not been followed. Range Pontiac Sales Co. v. Dickinson, 195 Tenn. 228, 258 S.W.2d 770, 1953 Tenn. LEXIS 327 (1953).

3. —Facts Excusing Failure to Comply With Conditions.

Where arrest of defendant was unlawful due to search of automobile without a warrant but defendant made no objection to testimony by state officers, and testified that the defendant transported whiskey in question at time of seizure and that the defendant owned the car in which whiskey was transported, an order confiscating the property by the commissioner was valid. Dickinson v. Ross, 196 Tenn. 162, 264 S.W.2d 800, 1954 Tenn. LEXIS 358 (1954).

4. —Return on Acquittal.

Where the alcoholic beverage commission seized contraband liquor from a defendant charged with illegal possession and the charge was nolle prossed, the court held that a jury verdict of acquittal was not binding on the court or the commission with regard to the disposition of the confiscated liquor, that under T.C.A. § 57-3-411 and related statutes, a circuit court had no authority to return the liquor to the defendant and that the liquor had to be sold as contraband in accordance with T.C.A. §§ 57-9-201 — 57-9-204. Alcoholic Beverage Com. v. Simmons, 512 S.W.2d 585, 1973 Tenn. Crim. App. LEXIS 225 (Tenn. Crim. App. 1973).

5. Void Sale by Commissioner.

Sale of car by commissioner after denial of hearing to owner of car was void. Brooks v. McCoy, 192 Tenn. 586, 241 S.W.2d 579, 1951 Tenn. LEXIS 305 (1951).

6. Attack on Judgment of Commissioner.

The rules governing collateral attacks on the judgments of courts of general jurisdiction are not applicable to a judgment of the commissioner. Brooks v. McCoy, 192 Tenn. 586, 241 S.W.2d 579, 1951 Tenn. LEXIS 305 (1951).

7. Inquiry by Claimant.

The requirement of this section that a person selling a car or otherwise acquiring a claim

against it make the specified inquiry to the designated officials before the seller shall be entitled to recover such car where it is seized under the provisions of the statute is mandatory. Dolen v. State, 181 Tenn. 31, 178 S.W.2d 387, 1944 Tenn. LEXIS 342 (1944); McQueen v. McCanless, 182 Tenn. 453, 187 S.W.2d 630, 1945 Tenn. LEXIS 241 (1945).

Lienors of automobiles confiscated when the drivers were found to be transporting unstamped liquor were not entitled to repossession of the automobiles where they had failed to make the inquiry of the designated officials required by this section. Dolen v. State, 181 Tenn. 31, 178 S.W.2d 387, 1944 Tenn. LEXIS 342 (1944).

Holder of chattel mortgage on truck confiscated because it was being used for transportation of unstamped liquor was not entitled to recover the truck where the holder only made inquiry of constable and did not inquire of sheriff or other principal law enforcement officer. McQueen v. McCanless, 182 Tenn. 453, 187 S.W.2d 630, 1945 Tenn. LEXIS 241 (1945).

It is not necessary that claimant make inquiry at the offices of each of the law enforcement officials listed in the statute since the listing of such officials is disjunctive rather than conjunctive. General Motors Acceptance Corp. v. Atkins, 204 Tenn. 700, 325 S.W.2d 270, 1959 Tenn. LEXIS 329 (1959).

Confiscated automobile was properly restored to purchaser of conditional sales notes and conditional sales contract where purchaser made inquiry of federal alcoholic tax unit and was informed that neither buyer nor her husband had any record of liquor law violations, even though purchaser made no inquiry of other law enforcement agencies listed in the statute. General Motors Acceptance Corp. v. Atkins, 204 Tenn. 700, 325 S.W.2d 270, 1959 Tenn. LEXIS 329 (1959).

Where automobile was purchased in Kentucky under conditional sales contract by Tennessee residents, and Kentucky statute did not require inquiry as to purchaser's reputation for dealing in contraband liquor, this section would not preclude Kentucky finance company from satisfying its lien where automobile was confiscated in Tennessee for violation of Tennessee liquor laws. Boyd v. Interstate Acceptance Corp., 205 Tenn. 458, 326 S.W.2d 911, 1959 Tenn. LEXIS 383 (1959).

Where purchaser of conditional sales contract relied on car dealer's statements as to whether the purchaser of the automobile was engaged in the illicit liquor business but did not make any investigation of its own, such investigation does not comply with the statute. Boyd v. General Motors Acceptance Corp., 205 Tenn. 658, 330 S.W.2d 13, 1959 Tenn. LEXIS 405 (1959).

8. Presumption of Knowledge by Claimant.

Wife of reputed bootlegger, who allowed husband's driver to have key to and unlimited use of car which she sought to recover after seizure, was subject to presumption against her contention that she had no knowledge or reason to believe that her car was being or would be used in violation of the liquor laws. McCanless v. Pearson, 190 Tenn. 123, 228 S.W.2d 84, 1945 Tenn. LEXIS 195 (1945).

9. Reclaiming Confiscated Car.

In proceeding for forfeiture where person seeks return of car the state has the burden of proving the affirmative allegations upon which the right to forfeiture exists, and where such right is not proved it does not matter that the claimant cannot prove the matter required by this section. MacFarland v. Wofford, 211 Tenn. 309, 364 S.W.2d 914, 1963 Tenn. LEXIS 351 (1963).

57-9-203. Review of action of commission — Appeal to supreme court.

(a) The action of the alcoholic beverage commission may be reviewed by petition for common-law writ of certiorari, addressed to the circuit court of Davidson County, which petition shall be filed within ten (10) days from the date the order of the commission is made.

(b) Immediately upon the grant of the writ of certiorari the commission shall cause to be made, certified and forwarded to the court a complete transcript of the proceedings in the cause, which shall contain all the proof submitted before the commission. All defendants named in the petition desiring to make defense shall answer or otherwise plead to the petition within ten (10) days from the date of the filing of the transcript unless the time be extended by the court.

(c) The decision of the commission shall be reviewed by the circuit court solely upon the pleadings and the transcript of the proceedings before the commission, and neither party shall be entitled to introduce any additional evidence in the circuit court. The confiscated goods shall not be sold pending

such review, but shall be stored by the commission until the final disposition of the case.

(d) Within the discretion of the commission, the claimant may be awarded possession of the confiscated goods pending the decision of the circuit court under the petition of certiorari; provided, that the claimant shall be required to execute a bond payable to the state of Tennessee in an amount double the value of the property seized, the sureties to be approved by the commission. The condition of the bond shall be that the obligors shall pay to the state, through the commission, the full value of the goods or property seized, unless upon certiorari the decision of the commission shall be reversed and the property awarded to the claimant.

(e) Either party dissatisfied with the judgment or decree of the circuit court may upon giving bond as required in other suits, appeal to the supreme court, and have a reexamination, in that court, of the whole matter of law and fact appearing in the record. When any such appeal is made, the clerk of the circuit court in which such suit was pending shall include as a part of the record the original certified transcript of the proceedings had before the commission. The appeal shall be advanced upon the docket of the supreme court as one of such precedence, and heard as promptly as practicable.

History.

Acts 1941, ch. 119, § 3; 1945, ch. 88, § 1; C. Supp. 1950, § 6648.26 (Williams, § 6648.28); impl. am. Acts 1963, ch. 258, §§ 2, 3; T.C.A. (orig. ed.), § 57-624; Acts 1981, ch. 449, § 2.

Compiler's Notes.

This section may be affected by T.R.A.P. 24.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 2, 22, 28.

NOTES TO DECISIONS

Analysis

1. Application.
2. Review.
3. Power of Circuit Court to Return Contraband.

1. Application.

Where the commissioner (now commission) illegally delivered possession of an automobile to a third party, the procedure provided by this section afforded no remedy to the petitioner for the recovery of the automobile wrongfully being withheld from him, and procedure provided herein did not have to be followed. Brooks v. McCoy, 192 Tenn. 586, 241 S.W.2d 579, 1951 Tenn. LEXIS 305 (1951).

2. Review.

A writ of certiorari granted under the provisions of this section does not bring up for determination any question except that of whether the commissioner (now commission) exceeded jurisdiction or acted illegally, arbitrarily or fraudulently. Boyd v. General Motors Acceptance Corp., 205 Tenn. 658, 330 S.W.2d 13, 1959 Tenn. LEXIS 405 (1959).

If there is any material evidence to sustain the finding of the hearing officer, and there is no illegal, fraudulent or arbitrary action, then the court must sustain the finding of the hearing officer. Boyd v. General Motors Acceptance Corp., 205 Tenn. 658, 330 S.W.2d 13, 1959 Tenn. LEXIS 405 (1959).

3. Power of Circuit Court to Return Contraband.

Where the commission seized contraband liquor from a defendant charged with illegal possession and the charge was nolle prossed, the court held that a jury verdict of acquittal was not binding on the court or the commission with regard to the disposition of the confiscated liquor, that, under T.C.A. § 57-3-411 and related statutes, a circuit court had no authority to return the liquor to the defendant, and that the liquor had to be sold as contraband in accordance with T.C.A. §§ 57-9-201 — 57-9-204. Alcoholic Beverage Com. v. Simmons, 512 S.W.2d 585, 1973 Tenn. Crim. App. LEXIS 225 (Tenn. Crim. App. 1973).

57-9-204. Forfeiture of unclaimed property — Exclusivity of remedy.

(a) If no claim is interposed, such alcoholic beverages or other property shall be forfeited without further proceedings and the same shall be sold as herein provided.

(b) The above procedure is the sole remedy of any claimant, and no court shall have jurisdiction to interfere therewith by replevin, injunction, supersedeas or in any other manner.

History.

Acts 1941, ch. 119, § 4; C. Supp. 1950, § 6648.27 (Williams, § 6648.29); Acts 1955, ch. 347, § 7; 1959, ch. 302, § 2; T.C.A. (orig. ed.), § 57-625.

Cross-References.

Procedure for seizing contraband property in cases of seizure of alcoholic beverages, § 57-9-202.

Textbooks.

Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 28.

NOTES TO DECISIONS

Analysis

1. Application.
2. Replevin Against Third Person Illegally in Possession.
3. Power of Circuit Court to Return Contraband.

1. Application.

Plainly the prohibition of this section against interference by the courts relates to cases where the liquors or the vehicle have been seized, and no court is to interfere with his jurisdiction in such cases when jurisdiction has attached. Brooks v. McCoy, 192 Tenn. 586, 241 S.W.2d 579, 1951 Tenn. LEXIS 305 (1951).

The sole remedy provision of this section necessarily contemplated only those cases in which the commissioner (now commission) retained possession of the property while right to confiscation was being litigated. Brooks v. McCoy, 192 Tenn. 586, 241 S.W.2d 579, 1951 Tenn. LEXIS 305 (1951).

2. Replevin Against Third Person Illegally in Possession.

When the commissioner (now commission) illegally surrenders possession while the cause is pending a hearing on a claimant's petition, it necessarily follows that a replevin suit by the owner of the car against a third person illegally in possession is not an interference with the jurisdiction of the commissioner as he surrendered jurisdiction by surrendering possession before confiscation was complete, and under these circumstances, the exclusive remedy provisions of this section are not applicable. Brooks v. McCoy, 192 Tenn. 586, 241 S.W.2d 579, 1951 Tenn. LEXIS 305 (1951).

3. Power of Circuit Court to Return Contraband.

Where the commission seized contraband liquor from a defendant charged with illegal possession and the charge was nolle prossed, the court held that a jury verdict of acquittal was not binding on the court or the commission with regard to the disposition of the confiscated liquor, that under T.C.A. § 57-3-411 and related statutes, a circuit court had no authority to order the return of the liquor to the defendant, and that the liquor had to be sold as contraband in accordance with T.C.A. §§ 57-9-201 — 57-9-204. Alcoholic Beverage Com. v. Simmons, 512 S.W.2d 585, 1973 Tenn. Crim. App. LEXIS 225 (Tenn. Crim. App. 1973).

57-9-205. Employment of aides and assistants by commission — Disposition of revenues. —

(a) The commission shall have the authority, by and with the consent of the governor, to employ such aides and assistants that may be deemed necessary in the proper enforcement of this part and the collection of all taxes upon alcoholic beverages containing more than five percent (5%) alcohol, whose compensation shall be approved by the governor and paid out of the funds or receipts collected from taxes on alcoholic beverages; provided, however, that the cost of administering the alcoholic beverage statutes shall not exceed five percent (5%) of the gross amount of the revenues collected from such sources,

which expenses shall be deducted before any allocation or distribution is made by the state.

(b) The proceeds of all seizures, confiscations and sales made under this part shall be paid by the commission into the state treasury; provided, that ten percent (10%) of such proceeds shall be set aside as expenses for the administration of this part.

(c) All revenues derived from the sales of contraband goods after deducting the expenses of the enforcement of this part shall be distributed as in the case of other revenues from alcoholic beverages; that is, one-half (½) to the state and one-half (½) to the counties, as provided by § 57-3-306.

History.
Acts 1941, ch. 119, § 5; C. Supp. 1950, § 6648.28 (Williams, § 6648.30); impl. am. Acts 1963, ch. 258, §§ 2, 3; T.C.A. (orig. ed.), § 57-626.

57-9-206. Employees authorized to carry arms — Execution of search warrants.

(a) Any duly authorized representative or employee of the commission, who has been designated by the commission to enforce this part, is authorized and empowered to go armed, or carry a pistol while on active duty engaged in enforcing this part.

(b) Any such duly authorized representative or employee of the commission who has been designated by the commission to enforce this part is authorized and empowered to execute search warrants and do all acts incident thereto, in the same manner as search warrants may be levied by sheriffs and other peace officers.

History.
Acts 1941, ch. 119, § 6; C. Supp. 1950, § 6648.29 (Williams, § 6648.31); impl. am. Acts 1963, ch. 258, §§ 2, 3; T.C.A. (orig. ed.), § 57-627.

CHAPTER 10

ALCOHOL-RELATED INJURIES

Section
57-10-101. Proximate cause.
57-10-102. Standard of proof.

57-10-101. Proximate cause.

The general assembly hereby finds and declares that the consumption of any alcoholic beverage or beer rather than the furnishing of any alcoholic beverage or beer is the proximate cause of injuries inflicted upon another by an intoxicated person.

History.
Acts 1986, ch. 519, § 1.

Law Reviews.
One Too Many: Sellers, Servers Must Know "How Much Is Too Much" to Avoid Alcohol Related Injuries (Mike Faulk), 43 Tenn. B.J. 12 (2007).

Selected Tennessee Legislation of 1986, 54 Tenn. L. Rev. 457 (1987).

NOTES TO DECISIONS

1. Applicability.

This chapter governing the liability of sellers of alcohol, rather than the duties imposed by criminal statutes, determines the civil liability of the seller. Worley v. Weigel's, Inc., 919 S.W.2d 589, 1996 Tenn. LEXIS 188 (Tenn. 1996), rehearing denied, — S.W.2d —, 1996 Tenn. LEXIS 255 (Tenn. 1996).

Trial court did not err in determining that the minor party guest's sister, who furnished the alcohol, was not at fault as a matter of law pursuant to T.C.A. § 57-10-101, which insulated those who "furnish" alcoholic beverages from liability for injuries caused by persons who consume the beverages. Biscan v. Brown, 160 S.W.3d 462, 2005 Tenn. LEXIS 308 (Tenn. 2005).

T.C.A. §§ 57-10-101 and 102 apply to third parties and do not authorize an action against a seller of an "alcoholic beverage or beer" by or on behalf of the supplied, or "first" party. Since the Tennessee Dram Shop Act (Act) does not address first parties, its enactment leaves the law as to first parties as it existed before the Act's enactment. Montgomery Ex Rel. Montgomery v. Kali Orexi, LLC, 303 S.W.3d 281, 2009 Tenn. App. LEXIS 123 (Tenn. Ct. App. Mar. 27, 2009).

Tennessee Dram Shop Act, T.C.A. §§ 57-10-101 and 102, applied only to third parties and did not permit the deceased's wife to bring an action against the restaurant on behalf of the deceased, who died after becoming intoxicated at a restaurant. Montgomery Ex Rel. Montgomery v. Kali Orexi, LLC, 303 S.W.3d 281, 2009 Tenn. App. LEXIS 123 (Tenn. Ct. App. Mar. 27, 2009).

Determination that the insurer of a bar was liable under its liquor liability policy for the death of the claimant was appropriate because the allegations were sufficient to given notice that the claimant's wife was claiming that her husband sustained injuries as a result of the selling, serving, or furnishing of any alcoholic beverage. Additionally, the liquor liability policy did not extend only to instances included within the Dram Shop Act (Act), T.C.A. §§ 57-10-101 to 57-10-102 because the policy language contained no reference to the Act; moreover, by failing to defend the lawsuit, the insurer was bound by the finding of liability against the bar. Clark v. Sputniks, LLC, — S.W.3d —, 2011 Tenn. App. LEXIS 278 (Tenn. Ct. App. May 25, 2011), aff'd in part, rev'd in part, Clark v. Sputniks, 368 S.W.3d 431, 2012 Tenn. LEXIS 378 (Tenn. May 30, 2012).

57-10-102. Standard of proof.

Notwithstanding § 57-10-101, no judge or jury may pronounce a judgment awarding damages to or on behalf of any party who has suffered personal injury or death against any person who has sold any alcoholic beverage or beer, unless such jury of twelve (12) persons has first ascertained beyond a reasonable doubt that the sale by such person of the alcoholic beverage or beer was the proximate cause of the personal injury or death sustained and that such person:

(1) Sold the alcoholic beverage or beer to a person known to be under the age of twenty-one (21) years and such person caused the personal injury or death as the direct result of the consumption of the alcoholic beverage or beer so sold; or

(2) Sold the alcoholic beverage or beer to a visibly intoxicated person and such person caused the personal injury or death as the direct result of the consumption of the alcoholic beverage or beer so sold.

History.

Acts 1986, ch. 519, § 2; 2009, ch. 492, § 1.

Compiler's Notes.

Acts 2009, ch. 492, § 2 provided that the act, which amended § 57-10-102(2), shall apply to any cause of action accruing on or after June 23, 2009.

Cross-References.

Alcohol abuse prevention, title 33, ch. 10, part 4.

Law Reviews.

One Too Many: Sellers, Servers Must Know "How Much Is Too Much" to Avoid Alcohol Related Injuries (Mike Faulk), 43 Tenn. B.J. 12 (2007).

TITLE 58

MILITARY AFFAIRS, EMERGENCIES AND CIVIL DEFENSE

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MILITARY FORCES

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PART 1

MILITARY FORCES — IN GENERAL

58-1-101. Short title.

Parts 1, 2 and 4-6 of this chapter may be cited as the "Tennessee Military Code of 1970."

History.
Acts 1970, ch. 596, § 1; T.C.A., § 7-101.

Cross-References.
Excused absence for deployment or return

from deployment of parent or guardian in armed forces, § 49-6-3019.

Militia, title 58, ch. 1, part 3.

Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

Law Reviews.

Suddenly Discharged the Combat Continues: Eliminating the Legal Services Gap to Ensure Veterans' Success After Leaving Military Service, 45 U. Mem. L. Rev. 837 (2015).

The Credibility Trap: Notes on a VA Evidentiary Standard, 45 U. Mem. L. Rev. 887 (2015).

58-1-102. Definitions.

In parts 1, 2 and 4-6 of this chapter, unless the context otherwise requires:

(1) "Active duty" and "active service" means military duty in a military force (not including the inactive national guard) or in the military department, under an order of the governor issued pursuant to parts 1, 2 and 4-6 of this chapter and while going to and returning from the same. Such duty may be either in a full-time or part-time status, depending upon the conditions under which it is performed;

(2) "Active military service of the United States" means full-time duty in the army, navy (including marine corps), air force or coast guard of the United States;

(3) "Air national guard" means that part of the national guard which is:

(A) An air force;

(B) Trained, and has its officers appointed under the United States Constitution, article 1, § 8, clause 16, and federal laws enacted pursuant thereto, and under the Constitution of Tennessee and parts 1, 2 and 4-6 of this chapter;

(C) Organized, armed and equipped wholly or partly at federal expense; and

(D) Federally recognized;

(4) "Army national guard" means that part of the national guard which is:

(A) A land force;

(B) Trained, and has its officers appointed under United States Constitution, article 1, § 8, clause 16, and federal laws enacted pursuant thereto, and under the Constitution of Tennessee and parts 1, 2 and 4-6 of this chapter;

(C) Organized, armed and equipped wholly or partly at federal expense; and

(D) Federally recognized;

(5) "Commanding officer" includes only commissioned officers;

(6) "Enlisted member" means a person in an enlisted grade or status;

(7) "Federal recognition" means acknowledgment by the federal government that a person appointed to an authorized grade and position vacancy in the national guard meets the prescribed federal standards for such grade and position;

(8) "Grade" means a step or degree, in a graduated scale of office, or military rank, that is established and designated as a grade by law or regulations;

(9) "May" is used in a permissive sense. "No person may" means that no person is required, authorized or permitted to do the act described;

(10) "Military" is used as a descriptive adjective to denote a quality pertaining to any or all of the armed forces;

(11) "Military department" means the military agency or division of the state, the composition of which is set forth in § 58-1-114;

(12) "Military service of the state" means service in or with any of the military forces or the military department;

(13) "National guard" means the army national guard and the air national guard;

(14) "Officer" or "commissioned officer" means commissioned or warrant officer;

(15) "Rank" means the order of precedence among members of the armed forces;

(16) "Shall" is used in an imperative and mandatory sense;

(17) "Superior officer" means a commissioned officer superior in rank or command; and

(18) "Voluntary aid or assistance" means actions taken by individual units of the national guard, within guidelines provided by the governor, to provide local communities with assistance during times of crisis not otherwise declared by the governor or president of the United States as a disaster or emergency.

History.
Acts 1970, ch. 596, § 2; 1978, ch. 830, § 1; T.C.A., § 7-102.

Cross-References.
Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

58-1-103. Custom and usage of the armed forces of the United States — Regulations continued in effect.

(a) All matters relating to the organization, discipline and government of the Tennessee national guard, not otherwise provided for in parts 1, 2 and 4-6 of this chapter, or by regulations issued pursuant thereto, shall be decided by the customs and usage of the appropriate force or forces of the armed forces of the United States.

(b) All regulations in effect on March 2, 1970, and consistent with parts 1, 2 and 4-6 of this chapter, shall hereby continue in effect until such time as the same may be modified, rescinded, superseded, or otherwise changed by regulations issued pursuant to such sections.

History.
Acts 1970, ch. 596, §§ 100, 101; T.C.A., § 7-103.

Cross-References.
Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

58-1-104. Military forces — Division and composition.

(a) The military forces of the state, in conformity with the Constitution of Tennessee, shall be divided into three (3) parts, as follows: the army, the navy and the militia.

(b) The army shall be composed of an army national guard and an air national guard, which forces, together with an inactive national guard, when such is authorized by the laws of the United States and regulations issued pursuant thereto, shall comprise the Tennessee national guard; and the Tennessee state guard, whenever such a state force shall be duly organized, and its reserve.

(c) The navy shall consist of such naval or sea forces as may be duly organized.

(d) The militia shall consist of all able-bodied male citizens who are residents of this state and between eighteen (18) and forty-five (45) years of age and who are not members of the army or navy as hereinabove defined, and who may not otherwise be exempted by the laws of this state or the United States.

History.

Acts 1970, ch. 596, § 3; T.C.A., § 7-104; Acts 1985, ch. 36, §§ 13, 14; 1998, ch. 584, § 1.

Cross-References.

Air national guard, § 58-1-204.

Army national guard, § 58-1-203.

Defense force, title 58, ch. 1, part 4.

Militia, Tenn. Const., art. I, §§ 24, 25; art. VIII.

National guard, §§ 58-1-105 — 58-1-235.

Performance of military duty, Tenn. Const., art. I, § 28; art. IV, § 1.

Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

Transfer of militia to national guard after call to active service, § 58-1-305.

Attorney General Opinions.

When activated by the governor to active state duty and operating in the course of that duty, the Tennessee state guard constitutes an arm of the state and enjoys the sovereign immunity of the state of Tennessee; thus, if monthly drills and training opportunities are in the course of active duty, the state guard, under the order, control and supervision of the governor, is immune from suit, OAG 02-011 (1/10/02).

58-1-105. Commander-in-chief of military forces — Powers — Regulations.

The governor shall be the commander-in-chief of the military forces, except when they shall have been called into the service of the United States, and is authorized and empowered:

(1) To issue all such orders, rules and regulations as may be necessary to provide for the organization, government, discipline, maintenance, training, and equipment of the national guard. All such orders, rules and regulations issued by the governor shall have the force and effect of law, but they shall conform to the laws and regulations of the United States relating to the organization, discipline and training of the national guard, to parts 1, 2 and 4-6 of this chapter and as nearly as practicable to the laws and regulations governing the United States army and the United States air force;

(2) Upon the duly and legally constituted call of the president of the United States, to call into service all or any portion of the military forces of the state;

(3) To appoint, commission and determine the grade of all officers and to select all warrant officers;

(4) To determine and fix the home station and location of the various units of the national guard;

(5) To provide such buildings, facilities and grounds as may be necessary to conduct the various activities of the branches and units of the national guard;

(6) To have, exercise and enjoy such other, further and general powers with respect to the military forces, as may be necessary to execute parts 1, 2 and 4-6 of this chapter or any other statute, or any constitutional provision affecting the military forces, as such statutes and constitution may now exist, or with any amendments thereto or changes therein; and

(7) To issue rules, regulations and guidelines specifying the manner, conditions and time period in which a military unit may engage in voluntary aid or assistance.

History.

Acts 1970, ch. 596, § 4; 1978, ch. 830, § 2; T.C.A., § 7-105.

Cross-References.

Appointment and promotion of national guard officers, §§ 58-1-209 — 58-1-213.

Appointment of state guard officers, § 58-1-405.

Devolution of duties on adjutant general, § 58-1-116.

Extension of periods of service, § 58-1-221.

Governor to be commander-in-chief, Tenn. Const., art. III, § 5.

Militia line officers, election by ballot, § 58-1-303.

Powers over militia, title 58, ch. 1, part 3.

Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

Supervision of state guard, § 58-1-405.

Transfer of militia to national guard, § 58-1-305.

58-1-106. Active state duty — Compensation — Reimbursement by city or county.

(a) The governor shall have the power, in case of invasion, disaster, insurrection, riot, attack, or combination to oppose the enforcement of the law by force and violence, or imminent danger thereof, or other grave emergency, to order into the active service of the state, for such period, to such extent and in such manner as the governor may deem necessary, all or any part of the national guard or the Tennessee state guard, but, in accordance with the constitution, may not call the militia into service except in case of rebellion or invasion, and then only when the general assembly shall declare by law that the public safety requires it.

(b) Whenever members of the military forces are called into active service of the state, they shall serve for such period as the governor may direct, not to exceed the duration of the emergency for which they may be called. The compensation of all members while on duty or assembled pursuant to subsection (a) shall be paid in the manner and in the amounts prescribed by § 58-1-109 for the national guard and § 58-1-411 for the Tennessee state guard.

(c) As an alternative and cumulative procedure, upon the request of the governing body of a city or county, and its representation, by resolution duly and regularly adopted, that there is a breakdown of law and order, a grievous breach of the peace, a riot, resistance to process of this state, or disaster, or imminent danger thereof, the governor may order into the active service of the state, for such period, to such extent and in such manner as the governor may deem necessary, all, or any part of, the national guard, or the Tennessee state guard. When the national guard or state guard is called pursuant to resolutions so adopted, the compensation of all members while on duty, shall be paid in the manner and in the amounts set forth in § 58-1-109 for the national guard and § 58-1-411 for the Tennessee state guard, and the county and/or city

shall reimburse the military department for all such compensation and for all expenses incurred in connection with such duty. Compensation and expenses shall be paid forthwith upon demand of the adjutant general and upon default of payment, all state funds payable to such defaulting city or county shall be withheld until such time as the full amount has been collected and applied to the satisfaction of the indebtedness. Assistance authorized by, and requested from, competent authority provided only by the Tennessee state guard at the request of a city, county, or other local authority pursuant to this section by volunteers without compensation, shall not require the county or city to reimburse the military department; provided, however, that any travel expenses resulting from the authorized assistance of Tennessee state guard members from outside the requesting city or county shall require reimbursement from the city, county or local authority to the military department, when the department incurs an expense as a result of the travel for costs directly paid by the department or for travel claims filed by Tennessee state guard members.

(d) Duty performed pursuant to this section shall not count against the leaves provided for in § 8-33-109 and title 8, chapter 50, part 8, nor against any other leave provided by law, regulation, policy or practice of the state or any county, municipality, or other arm, agency or political subdivision of the state. Compensation as provided in § 58-1-109, for such duty shall be in addition to the salary or compensation otherwise payable to any member who is an officer or employee of the state or any political subdivision thereof.

History.

Acts 1970, ch. 596, § 5; T.C.A., § 7-106; Acts 1985, ch. 36, § 15; 1998, ch. 584, §§ 2-4; 2013, ch. 364, §§ 2-4.

Cross-References.

Calling militia into active service, Tenn. Const., art. III, § 5; § 58-1-301.

Compensation of state guard, § 58-1-411.

Enlisting state guard, see § 58-1-401.

Failure to appear for service when called, § 58-1-302.

Group life insurance plan for guardsmen on active duty, § 8-27-206.

Offenses specifically applicable to the national guard while in a drill or duty status, penalties, § 58-1-632.

Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

Public employees in military service, title 8, ch. 33.

Standing armies avoided in time of peace, Tenn. Const., art. I, § 24.

Attorney General Opinions.

When activated by the governor to active state duty and operating in the course of that duty, the Tennessee state guard constitutes an arm of the state and enjoys the sovereign immunity of the state of Tennessee; thus, if monthly drills and training opportunities are in the course of active duty, the state guard, under the order, control and supervision of the governor, is immune from suit, OAG 02-011 (1/10/02).

When in a non-paid status, state guard members enjoy neither immunity from suit, nor workers' compensation benefits, OAG 05-112 (7/18/05).

The governor may delegate his authority to activate, supervise and control the state guard to the adjutant general, OAG 05-112 (7/18/05).

Activation of members of the Tennessee National Guard for emergency purposes, OAG 07-003 (1/8/07).

58-1-107. Troops on active duty — Commanding officers — Powers and duties.

When troops of the national guard are assigned to any state duty contemplated hereby, they shall act under the orders of the governor as commander in chief. Commanding officers of troops so employed are responsible only to their military superiors, and shall not act under, nor be subject to, the orders of any

civil officer; they shall apply military tactics in respect to the manner in which they shall act to accomplish their missions, and shall use the minimum amount of force necessary to ensure the accomplishment thereof.

History.
Acts 1970, ch. 596, § 6; T.C.A., § 7-107.

Cross-References.
Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

58-1-108. Active state duty — Individuals.

The governor is authorized and empowered to call individual members of the national guard to active state duty with their consent, for the performance of any official duty in connection with national guard activities.

History.
Acts 1970, ch. 596, § 7; T.C.A., § 7-108.

Cross-References.
Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

58-1-109. Active duty pay.

Members of the national guard when assigned to state military duty by the commander in chief, or when ordered to active state service pursuant to § 58-1-106, shall be paid from the funds appropriated, or otherwise legally made available to the military department, at the same rate of pay and allowances as are at the time provided for the same grade and ratings in active federal service, except that lesser rates of pay may be prescribed by the adjutant general for personnel on full-time active duty; provided, however, that no member shall receive less than fifty dollars ($50.00) per day. No member shall receive less than fifty-five dollars ($55.00) per day when called to active duty in case of grave emergency under § 58-1-106.

History.
Acts 1970, ch. 596, § 8; 1971, ch. 184, § 1; T.C.A., § 7-109; Acts 1987, ch. 128, §§ 1, 2.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Cross-References.
Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

58-1-110. Military staff of the governor.

The military staff of the governor shall consist of the adjutant general, who shall be ex officio chief of staff, the national guard officers assigned to the state headquarters, and such aides-de-camp as the governor shall deem necessary, all of whom shall be federally recognized, commissioned officers detailed by the governor from the national guard. Officers detailed pursuant to this section shall not be relieved from their ordinary duties except when actually on duty with the governor. The military staff of the governor shall perform such personal and ceremonial duties as may be required by the governor.

History.
Acts 1970, ch. 596, § 9; T.C.A., § 7-110.

Cross-References.
Governor to appoint his military staff, Tenn. Const., art. VIII, § 2.

Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

58-1-111. Honorary staff of the governor.

The honorary staff of the governor shall consist of the adjutant general, who shall be ex officio chief of staff, and such honorary aides-de-camp as the governor may deem desirable or proper. Honorary staff officers shall bear the honorary rank and title of colonel.

History.
Acts 1970, ch. 596, § 10; T.C.A., § 7-111.

Cross-References.
Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

58-1-112. Martial rule — Proclamation by governor — Procedure.

(a) Whenever any portion of the national guard is employed pursuant to § 58-1-106, the governor, if in the governor's judgment the maintenance of law and order will thereby be promoted, may, by proclamation, declare the county or city in which troops are serving, or any specified portion thereof, to be under martial rule.

(b) Following the governor's martial rule proclamation, the governor may promulgate the following orders to protect life and property or to bring the emergency situation under control:

(1) The establishment of a curfew and the prohibition and control of pedestrian and vehicular traffic, except essential emergency vehicles and personnel;

(2) The designation of specific zones within which the occupance and use of buildings and the ingress and egress of vehicles and persons may be prohibited or regulated;

(3) The regulation and closing of places of amusement and assembly;

(4) The prohibition of the sale and distribution of alcoholic beverages;

(5) The prohibition and control of the presence of persons on public streets;

(6) The regulation and control of the possession, storage, display, sale, transport and use of firearms, other dangerous weapons and ammunition; provided, that nothing in this subdivision (b)(6) shall be construed as authorizing confiscation of lawfully possessed firearms and ammunition during any period of martial rule; and

(7) The regulation and control of the possession, storage, display, sale, transport and use of explosives, and flammable materials and liquids.

(c) Such orders shall be effective from the time and in the manner prescribed in such orders and shall be given to the press, radio and television media for publication and broadcast.

(d) Nothing in this section shall be construed to authorize a declaration of martial law, in the sense of the unrestricted power of military officers, or others, to dispose of the persons, liberties or property of the citizen.

History.
Acts 1970, ch. 596, § 11; T.C.A., § 7-112; Acts 2009, ch. 288, § 1.

Cross-References.
Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

Prohibition against exercise of martial law, Tenn. Const., art. I, § 25.

58-1-113. Service without the state — Offenses committed — Jurisdiction.

(a) The governor may order the national guard, or any part thereof, to serve outside the borders of this state or of the United States in order to perform military duty of every description and to participate in parades, reviews, cruises, conferences, encampments, maneuvers or other training and to participate in small arms and other military competitions and to attend service schools.

(b) Officers and enlisted men of the national guard shall be subject to and governed by this chapter while without this state under the order or authorization of the governor under subsection (a) in like manner and to the same extent as when on duty within this state under orders of the governor so as to allow the governor and the courts of this state to have jurisdiction over such guardsmen for offenses committed while physically outside the state, so long as the state where the offense was committed and the accused agree to the trial of the issue in the Tennessee courts.

History.
Acts 1970, ch. 596, § 12; 1975, ch. 45, § 1; T.C.A., § 7-113.

Cross-References.
Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

Attorney General Opinions.
Activation of members of the Tennessee National Guard for emergency purposes, OAG 07-003 (1/8/07).

58-1-114. Military department constituted.

That agency, division or department of the state government, comprising the headquarters of the military forces of the state as constituted and defined in § 58-1-104, and the emergency management agency, shall be known and is hereby designated as the military department. The adjutant general shall be the executive head of the military department and commanding general of the military forces of the state.

History.
Acts 1970, ch. 596, § 13; T.C.A., § 7-114.

Cross-References.
Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

State system of personnel administration, title 8, ch. 30.

58-1-115. Adjutant general — Appointment.

The adjutant general shall be appointed by the governor for a term concurrent with the term of the governor who appointed the adjutant general, and shall serve as such at the pleasure of the governor. The adjutant general shall have such rank as may be conferred by the governor, but in no event shall

such rank be higher than that of lieutenant general. The adjutant general shall be a member of the Tennessee national guard who meets all of the qualifications to be a federally recognized general officer.

History.
Acts 1970, ch. 596, § 14; T.C.A., § 7-115; Acts 2007, ch. 140, § 1.

Cross-References.
Governor empowered to appoint adjutant general, Tenn. Const., art. VIII, § 2.

Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

Salaries of Class 1 and Class 2 officers, § 8-23-101.

58-1-116. Duties of the adjutant general — Records of office as evidence.

(a) The adjutant general shall be chief of staff to the governor and subordinate only to the governor in matters pertaining to the military department and the military and naval affairs of the state.

(b) It shall be the duty of the adjutant general to direct the planning and employment of the military forces of the state in carrying out their state military mission; to establish unified command of state forces whenever they shall be jointly engaged; to coordinate the military and naval affairs with the civil defense of the state. The adjutant general shall be custodian of all military records and shall keep the same indexed and available for ready reference. The adjutant general shall keep an itemized account of all moneys received and disbursed from all sources and shall make a biennial report to the governor on the condition of the military department and the military forces of the state, together with such other matters relating to the military department, as the adjutant general shall deem expedient, or as may be directed by the governor. The adjutant general shall cause the laws and regulations relating to the military department to be distributed to all military forces of the state. The adjutant general shall further perform such duties pertaining to the adjutant general's office as from time to time may be provided by the laws, rules and regulations of the United States and such as may be designated by the governor.

(c) The adjutant general shall have a seal of office approved by the governor and all copies and papers in the military department, duly certified and authenticated under such seal shall be evidence in like manner as if the original were produced.

(d) Whenever the governor and those in succession to the governor under the constitution and laws of the state shall be unable to perform the duties of commander in chief, such duties shall devolve upon the adjutant general.

History.
Acts 1970, ch. 596, § 15; T.C.A., § 7-116.

Cross-References.
Administration of real and personal military property, §§ 58-1-506 — 58-1-515.

Annual report, § 4-4-114.

Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

Attorney General Opinions.
The governor may delegate his authority to activate, supervise and control the state guard to the adjutant general, OAG 05-112 (7/18/05).

58-1-117. Design of the flag or banner of the military department.

The flag or banner of the Tennessee military department shall be of the following design, colors and proportions: an oblong flag or banner, the principal field of the flag or banner to be of the color blue, but the flag or banner ending at its free or outer end in a perpendicular bar of crimson, of uniform width, running from side to side, that is to say, from top to bottom of the flag or banner, and separated from the blue field by a narrow margin or stripe of white of uniform width; the width of the white stripe to be one third (⅓) that of the crimson bar; and the total width of the bar and stripe together to be equal to one sixteenth ($^1/_{16}$) of the width of the flag. In the center of the blue field shall be a distinctive crest. The crest shall be composed of a gold circle. Within the gold circle shall be a blue field with "Tennessee Military Department" in white along the top arch. The year "1796" in white shall be along the bottom arch of the circle. Three (3) white stars, representing the three (3) grand divisions of the state, shall be spaced equally on the sides of the language "1796". A gold circle lies within the outer ring. The interior of the gold circle shall be white. Centered within the white field shall be a representation of the state of Tennessee, designed in the manner of the Tennessee state flag. A black and white line drawing of the Minuteman, the symbol of the National Guard, shall be centered within the white circle, in the foreground, and shall overlap the inner gold circle at the top and bottom. The distinctive crest shall be proportional to the appropriate size of the flag.

History.
Acts 2008, ch. 645, § 1.

Cross-Reference.
Grand divisions, title 4, ch. 1, part 2.

Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

58-1-118. Offenses involving improper use or display of military decorations, medals or badges.

(a)(1) It is an offense for a person to wear or display any decoration or medal authorized by congress for the armed forces of the United States, or any of the service medals or badges awarded to the members of those forces, or the ribbon, button or rosette of any such badge, decoration or medal, or any colorable imitation thereof, with the intent to deceive or misrepresent to another that the person is authorized under regulations made pursuant to law to wear or display the badge, decoration or medal.

(2) It is an offense for a person to falsely represent, whether verbally or in writing, that the person has been awarded any decoration or medal authorized by congress for the armed forces of the United States, any of the service medals or badges awarded to the members of those forces, the ribbon, button or rosette of any such badge, decoration or medal, or any colorable imitation of such item.

(b)(1) It is an offense for a person to wear or display any decoration or medal authorized by the Tennessee military department, or the ribbon, button or rosette of any such decoration or medal, or any colorable imitation thereof, with the intent to deceive or misrepresent to another that the person is authorized under regulations made pursuant to law to wear or display any

such decoration or medal.

(2) It is an offense for a person to falsely represent, whether verbally or in writing, that the person has been awarded any decoration or medal authorized by the Tennessee military department, or the ribbon, button or rosette of any such decoration or medal, or any colorable imitation thereof.

(c) A violation of subsection (a) or (b) is a Class B misdemeanor, except if a decoration or medal involved is a Congressional Medal of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross, Silver Star, Purple Heart or any replacement or duplicate medal for such medal as authorized by law, then a violation of subsection (a) or (b) is a Class A misdemeanor.

History.
Acts 2009, ch. 274, § 1.

Cross-References.
Penalties for Class A and B misdemeanors, § 40-35-111.

Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

58-1-119. Offense of impersonating a member of the United States armed forces.

(a) It is an offense for a person to falsely impersonate or represent to another, whether by conduct, dress, verbally or in writing, that such person or a third party is or was a member of the armed forces of the United States with the intent to deceive or cause another to believe the representation when the person knows it to be false.

(b) It is not a defense to prosecution under this section that the person making the false representation received no benefit or monetary thing or value from it.

(c) This section shall not apply to wearing the dress of a member of the armed forces if done for the following purposes:

(1) Instructional;

(2) Law enforcement;

(3) Theatrical, motion picture or entertainment;

(4) Historical, ceremonial or educational; or

(5) As a costume if worn in accordance with or not prohibited by regulations promulgated pursuant to law.

(d) Nothing in this section shall be construed to prohibit prosecution under any other applicable statute if the person derives a benefit or thing of value from the impersonation.

(e) Impersonation of a member of the armed forces is a Class B misdemeanor.

History.
Acts 2012, ch. 612, § 1.

Cross-References.
Penalty for a Class B misdemeanor, § 40-35-111.

Priority on wait list of children with parent or guardian serving on active duty in armed forces, § 71-3-518.

PART 2

NATIONAL GUARD

58-1-201. Organization of state headquarters — Army division — Air division.

The state headquarters of the national guard is hereby organized and divided into an army division and an air division, with an officer whose rank shall be designated by the governor as the head of each division; provided, that no such officer's rank shall be higher than major general. The head of the army division shall be designated as assistant adjutant general for army, and the head of the air division shall be designated as assistant adjutant general for air. The governor is further authorized to appoint for the army division or the air division a deputy assistant adjutant general; provided, that no such officer's rank shall be higher than brigadier general. Such officer shall serve at the pleasure of the governor and shall perform military duties as assigned by the adjutant general.

History.

Acts 1970, ch. 596, § 16; T.C.A., § 7-117; Acts 1993, ch. 158, § 1.

Cross-References.

Exemption from provisions prohibiting carrying of weapons, § 39-17-1315.

Law Reviews.

Protecting Civilian Employment and Providing Healthcare to the Citizen Soldier in the National Guard and Reserve Components, 45 U. Mem. L. Rev. 915 (2015).

NOTES TO DECISIONS

1. Sovereign Immunity.

Dismissal of a claim under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. § 4301 et seq., was proper because, for an individual to sustain an action against a state pursuant to USERRA, the action must have been permitted by state law, and the Tennessee general assembly had not passed legislation to expressly waive its sovereign immunity from claims based on USERRA; appellant's claim that the state of Tennessee had impliedly waived its immunity from USERRA claims by expressly waiving its immunity from claims under the Tennessee Human Rights Act, T.C.A. § 4-21-101 et seq., and the Tennessee Disability Act, T.C.A. § 8-50-103(a), was misplaced because any such waiver had to be made in plain, clear, and unmistakable terms. The Tennessee National Guard was a division of the Tennessee Military Department, and thus was an entity of the state of Tennessee, and accordingly, the Tennessee National Guard had immunity from claims arising under the USERRA. Smith v. Tenn. Nat'l Guard, 387 S.W.3d 570, 2012 Tenn. App. LEXIS 552 (Tenn. Ct. App. Aug. 8, 2012), appeal denied, — S.W.3d —, 2012 Tenn. LEXIS 871 (Tenn. Nov. 21, 2012), cert. denied, at'l Guard, 185 L. Ed. 2d 365, 133 S. Ct. 1471, 568 U.S. 1195, 2013 U.S. LEXIS 1807 (U.S. 2013).

58-1-202. Organization and training — Laws and regulations of United States.

The national guard shall be organized, armed, disciplined, governed, administered, and trained as prescribed by parts 1, 2 and 4-6 of this chapter and the regulations issued thereunder; provided, however, that the governor shall conform the organization of the national guard to the organization prescribed by the laws of the United States and the lawful regulations promulgated pursuant thereto. To that end, the governor is hereby authorized to organize, reorganize or disband any unit, headquarters or staff therein, to increase or

decrease the number of commissioned officers, warrant officers and noncommissioned officers of any grade therein and to increase or decrease the strength of the national guard.

History.
Acts 1970, ch. 596, § 17; T.C.A., § 7-118.

58-1-203. Army national guard.

The land force of the national guard shall be the army national guard and shall comprise the army units which are a part of the national guard on March 2, 1970, and such other army units as may be organized hereafter, including the personnel who are enlisted, appointed or commissioned therein; provided, that all persons who are members of the army national guard shall be federally recognized as such.

History.
Acts 1970, ch. 596, § 18; T.C.A., § 7-119.

58-1-204. Air national guard.

The air force of the national guard shall be the air national guard and shall comprise the air units which are a part of the national guard on March 2, 1970, and such other air units as may be organized hereafter, including the personnel who are enlisted, appointed or commissioned therein; provided, that all persons who are members of the air national guard shall be federally recognized as such. The light aviation units of the army national guard shall not be considered air units within the meaning of parts 1, 2 and 4-6 of this chapter.

History.
Acts 1970, ch. 596, § 19; T.C.A., § 7-120.

58-1-205. Assemblies, annual training and other duty.

(a) Members and units of the national guard shall assemble for such drill, or other equivalent training, instruction or duties during each year and shall participate in such field training, encampments, maneuvers, schools, conferences, or other similar duties each year as may be ordered by competent authority; provided, that no assembly of any unit of the national guard shall be ordered in time of peace for any day during which a state or federal election shall be held, except in case of disaster, riot, attack, invasion or insurrection or imminent danger thereof.

(b) Members of the national guard, with their consent, may be ordered by the governor, or under the governor's authority, to perform special duty, including, but not limited to, duty, as a member of, or in any other capacity with, any military board, or as an investigating officer or medical examiner.

History.
Acts 1970, ch. 596, § 20; T.C.A., § 7-121.

Cross-References.
Offenses and penalties applicable to the national guard while in a drill or duty status, § 58-1-632.

NOTES TO DECISIONS

1. Workers' Compensation.
Where a member of the state national guard is injured while exclusively on federal active duty, he is not a state employee for workers' compensation coverage purposes. Yount v. State, 774 S.W.2d 919, 1989 Tenn. LEXIS 375 (Tenn. 1989).

58-1-206. Maintenance of national guard units.

In the event adequate and satisfactory armory accommodations, bases, camps, target ranges and other facilities are not furnished by the United States, counties or municipal corporations, the same may be provided and maintained by the state.

History.
Acts 1970, ch. 596, § 21; T.C.A., § 7-122.

Cross-References.
Armories and other military property and equipment, title 58, ch. 1, part 5.

58-1-207. Inactive national guard.

The inactive national guard shall consist of the persons commissioned, appointed or enlisted therein on March 2, 1970, such officers and enlisted personnel as may be hereafter transferred thereto from the army national guard and the air national guard and such persons as lawfully may be enlisted therein.

History.
Acts 1970, ch. 596, § 22; T.C.A., § 7-123.

58-1-208. Funds — Accounting requirements — Post exchanges and canteens — Regulations governing.

All unit funds, known as company, battalion, and regimental funds, however derived, in the hands of national guard organizations including the "station commander's upkeep and maintenance fund," shall be accounted for in accordance with regulations promulgated by the adjutant general. Post exchanges, canteen and similar activities shall likewise be operated and regulated in accordance with such regulations.

History.
Acts 1970, ch. 596, § 26; T.C.A., § 7-124.

58-1-209. Appointment and promotion of commissioned officers.

All commissioned officers of the national guard shall be considered for appointment and promotion by the governor upon the recommendation of appropriate commanders and under regulations promulgated pursuant to parts 1, 2 and 4-6 of this chapter.

History.
Acts 1970, ch. 596, § 28; T.C.A., § 7-125.

Cross-References.
Assignments, transfers and promotions, § 58-1-213.

State system of personnel administration, title 8, ch. 30.

58-1-210. Commissioned officers — Qualifications.

(a) No person shall be appointed or promoted as a commissioned officer of the national guard unless such person shall have passed such examination as to the person's physical, moral and professional qualifications as may be prescribed by the laws of the United States and by parts 1, 2 and 4-6 of this chapter and the regulations issued thereunder. No person shall be recognized as a commissioned officer of the national guard and no appointment as such shall become effective until the person shall have taken and subscribed to an oath of office.

(b) Any person who has been dismissed or discharged from the national guard of this or any other state or from the armed forces of the United States or any reserve component thereof, under other than honorable conditions, and has not been restored to duty, shall not be eligible for appointment as a commissioned officer in the national guard.

History.
Acts 1970, ch. 596, § 29; T.C.A., § 7-126.

58-1-211. Commissioned officers — Oath.

Every commissioned officer shall take and subscribe to the oath of office prescribed for officers of the national guard by the applicable laws of the United States and regulations issued pursuant thereto, and to parts 1, 2 and 4-6 of this chapter. Such oath shall be taken and subscribed before an officer of the national guard authorized to administer oaths as provided in parts 1, 2 and 4-6 of this chapter, or before a notary public or other officer authorized by the laws of this state to administer oaths.

History.
Acts 1970, ch. 596, § 30; T.C.A., § 7-127.

Cross-References.
Authority to administer oaths, § 58-1-234.

58-1-212. Precedence and date of rank.

Precedence or relative rank among officers of the same grade in the Tennessee national guard will be determined as follows:

(1) The date of rank is the date of federal recognition in the national guard; provided, that the officer has had no prior active federal or reserve component service in the same or higher grade;

(2) When an officer has had prior active or reserve component service in the same or higher grade, the officer's date of rank will precede the date of federal recognition by a period equal to the total length of such service (inactive service in either the army of the United States, reserve or national guard will not count);

(3) When the date of rank of two (2) or more officers is the same when computed under either subdivision (1) or (2), the senior will be determined

by the length of active commissioned service in the national guard. Further determination will be made by total active commissioned service in all components, then by age.

History.
Acts 1970, ch. 596, § 31; T.C.A., § 7-128.

58-1-213. Assignments and promotions.

Officers will be assigned, transferred and promoted under regulations prescribed and published pursuant to parts 1, 2 and 4-6 of this chapter.

History.
Acts 1970, ch. 596, § 32; T.C.A., § 7-129.

Cross-References.
Appointment and promotion, §§ 58-1-209, 58-1-210.

58-1-214. Officer's uniforms.

Every commissioned officer shall personally provide such uniforms and articles of equipment as may be prescribed by regulations issued pursuant to parts 1, 2, and 4-6 of this chapter.

History.
Acts 1970, ch. 596, § 33; T.C.A., § 7-130.

Cross-References.
Dress uniforms, § 58-1-232.

58-1-215. Efficiency and medical examining boards — Appointment — Authority.

(a) The efficiency, moral character and general fitness for retention of any commissioned officer may be investigated and determined by an examining board. The members of an examining board shall be senior in rank to the officer under investigation unless unavailable.

(b) The physical fitness for further service of any commissioned officer may be investigated and determined by a medical examining board of officers.

(c) Efficiency and medical examining boards shall be appointed by, or upon direction of, the governor. Whenever an examining board shall be appointed for the purpose of determining the fitness of any officer for continued federal recognition, such board shall be appointed by the commander designated in the applicable laws of the United States and the regulations issued thereunder.

History.
Acts 1970, ch. 596, § 34; T.C.A., § 7-131.

58-1-216. Efficiency and medical examining boards — Procedure.

(a) Efficiency and medical examining boards appointed by the governor shall follow the practice and procedure prescribed by applicable laws of the United States and this state, and the regulations issued thereunder, including the right to subpoena witnesses. Any officer ordered to appear before such a board shall be allowed to appear in person or by counsel, to cross-examine witnesses and to call witnesses in the officer's behalf. The officer shall at all

stages of the proceedings be allowed full access to the records pertinent to the case and be furnished with copies of the same. Failure to appear before any such examining board shall be sufficient ground for a finding by such board that the officer ordered to appear be discharged. If the findings of such board are unfavorable to an officer and are approved as provided by applicable laws of the United States or the state, the governor shall relieve the officer from duty and shall give the officer a discharge in such form as may be appropriate. If the discharge of an officer is recommended solely because of physical inability to perform active service, such officer may be transferred to the Tennessee national guard retired list in accordance with parts 1, 2 and 4-6 of this chapter.

(b) The national guard efficiency and medical examining board appointed by the governor shall periodically be subject to review pursuant to the governmental entity review law simultaneously with, and as an adjunct to, the military department.

History.
Acts 1970, ch. 596, § 35; T.C.A., § 7-132; Acts 1985, ch. 64, § 3.

Compiler's Notes.
Acts 1985, ch. 64, § 1 provided that it is the intent of the general assembly that the national guard efficiency and medical examining board, as of July 1, 1985, be reviewed and evaluated by the military department of the state of Tennessee, and that upon legislative oversight pursuant to the governmental entity review law, the military department shall have the burden of demonstrating the public need for the national guard efficiency and medical examining board's continued existence and shall recommend any changes which would increase its operational or administrative effectiveness.

Cross-References.
Retired list, § 58-1-219.

58-1-217. Resignation of officers.

(a) A commissioned officer of the national guard may tender resignation at any time to the governor. If the governor shall accept the resignation, the officer shall receive an honorable discharge; if the officer tendering the resignation shall be under arrest or if charges have been preferred against the officer for the commission of an offense punishable by a court-martial, the governor shall await the outcome of such charges and then issue or cause to be issued such a discharge in such form as may be indicated.

(b) Enlistment in the regular army, air force, navy, marine corps or coast guard of the United States shall be deemed a resignation by the person so enlisted of all commissions held in the military forces of this state.

(c) No officer shall be discharged or permitted to resign until having accounted for all military funds or property entrusted to the officer's care.

History.
Acts 1970, ch. 596, § 36; T.C.A., § 7-133.

58-1-218. Officers — Termination of appointments.

The appointment of a national guard officer will be terminated and the officer's state recognition withdrawn for the following causes and reasons, and none other:

(1) Death;

(2) Attainment of maximum ages as prescribed in federal law. Nothing in

parts 1, 2 and 4-6 of this chapter shall be construed to give any officer the assurance of serving until the officer has reached the maximum age, the maximum age being merely definitive of the maximum age to which the officer may serve if the officer's recognition is not withdrawn for other causes enumerated in this section. The appointment of any army medical department (AMMED) officer may be extended by the governor or the adjutant general if the officer can continue to serve as a federally recognized member of the reserve components under applicable federal law or the rules and regulations of the national guard bureau of the United States. The adjutant general may, in the adjutant general's sole discretion, extend the termination of any warrant officer to the last day of the month in which the officer reaches age sixty-two (62);

(3) Withdrawal of federal recognition. Whenever an officer is terminated or the officer's federal recognition is withdrawn by the valid action of the federal government, including terminations as a result of the application of the Reserve Officer's Personnel Act, as amended, such action will operate to terminate the officer's state appointment and as a withdrawal of the officer's state recognition;

(4) Pursuant to the finding of efficiency and medical boards as provided for in §§ 58-1-215 and 58-1-216;

(5) Resignation;

(6) Absence without leave for three (3) months;

(7) Failure, without justification, to complete a year of satisfactory federal service;

(8) Conviction of any crime involving moral turpitude;

(9) The acceptance of an appointment, or the enlistment, in any of the other military services of the United States;

(10) Induction into active military service under the Universal Military Training and Service Act, as amended;

(11) When it has been determined that the officer is subversive or disloyal;

(12) In the case of a chaplain, when ecclesiastical endorsement is withdrawn by the church of the officer's faith;

(13) In the case of an officer of the medical or dental corps, when the officer's license or right to practice such officer's profession has been terminated by proper authority;

(14) In the case of an officer of the judge advocate general's corps, when by action of appropriate authorities, the officer is refused the privilege of practicing law, or that privilege is withdrawn; or

(15) In the case of general officers, their appointments may also be terminated and their state recognition withdrawn under § 58-1-220.

History.

Acts 1970, ch. 596, § 37; 1973, ch. 353, § 1; 1978, ch. 787, § 1; T.C.A., § 7-134; Acts 1993, ch. 69, § 1; 2007, ch. 23, § 1.

Compiler's Notes.

The Reserve Officer's Personnel Act, referred to in this section, was compiled in 50 U.S.C. §§ 1181 — 1397, but has been repealed. See 10 U.S.C. § 101 et seq.

The Universal Military Training and Service Act, referred to in this section, and now known as the Military Selective Service Act of 1967, is compiled in 50 U.S.C. app. § 451 et seq.

58-1-219. Officers — Retired list.

When the appointment of any officer is terminated and federal recognition withdrawn pursuant to § 58-1-218(2), the officer's name shall be placed upon the national guard retired list. Those terminated under § 58-1-218(3), (4), (5) and (7), may also be placed upon such list if the termination was not occasioned by misconduct or undesirable habits and traits of character.

History.
Acts 1970, ch. 596, § 38; T.C.A., § 7-135.

58-1-220. General officers — Tenure.

No general officer of the line and no air guard general officer, unless the officer be the adjutant general, deputy adjutant general, or an assistant adjutant general army and an assistant adjutant general air, shall serve more than three (3) years as a federally recognized general officer. Should a general officer of the line or an air guard general officer of the line hold the rank of major general or occupy a vacancy designated to be held by a major general, such general officer shall, at the discretion of the adjutant general, be allowed to serve for two (2) additional years from the date such general officer is federally recognized as a major general.

History.
Acts 1970, ch. 596, § 39; 1975, ch. 263, § 1;
1978, ch. 664, § 1; T.C.A., § 7-136.

58-1-221. Enlisted personnel — Period of service.

(a) The qualifications for enlistment and reenlistment, the period of enlistment, reenlistment and voluntary extension of enlistment, the period of service, the form of oath to be taken, and the manner and form of transfer and discharge of enlisted personnel of the national guard shall be those prescribed by applicable laws of the United States and by parts 1, 2 and 4-6 of this chapter and by regulations issued thereunder.

(b) Any person who has been discharged under other than honorable conditions from the military forces of this or any other state or from any component of the armed forces of the United States and has not been restored to duty shall not be eligible for enlistment in any force of the national guard.

(c)(1) The governor is authorized to extend the period of any enlistment, reenlistment, voluntary extension of enlistment and the period of service of enlisted personnel of the national guard for, but not exceeding, the duration of an emergency declared by the governor.

(2) Whenever the period of enlistment, reenlistment, voluntary extension of enlistment and the period of service of enlisted personnel of the reserve components of the armed forces of the United States is extended, the governor shall extend the period of enlistment, reenlistment, voluntary extension of enlistment and the period of service of enlisted personnel in the national guard for the same period.

History.
Acts 1970, ch. 596, § 40; T.C.A., § 7-137.

Cross-References.
State system of personnel administration, title 8, ch. 30.

58-1-222. Contract and oath of enlistment.

Every person who enlists or reenlists in the national guard shall sign an enlistment contract and shall take and subscribe to such oath or affirmation of enlistment as may be prescribed by the applicable laws of the United States and by regulations issued pursuant to parts 1, 2 and 4-6 of this chapter. Such oath shall be taken and subscribed before any officer of the national guard. A person making a false oath as to any statement contained in such enlistment contract shall, upon conviction, be deemed guilty of perjury.

History.
Acts 1970, ch. 596, § 41; T.C.A., § 7-138.

Cross-References.
Authority to administer enlistment oaths, § 58-1-234.
Effecting unlawful enlistment, penalty, §§ 58-1-612, 58-1-631.
False official statements, penalty, §§ 58-1-622, 58-1-631.
Fraudulent enlistment, penalty, §§ 58-1-611, 58-1-631.
Penalties under military code, § 58-1-631.

58-1-223. Promotions and reductions.

Enlisted personnel of the national guard shall be promoted and reduced in grade or rank as prescribed by regulations issued pursuant to parts 1, 2 and 4-6 of this chapter.

History.
Acts 1970, ch. 596, § 42; T.C.A., § 7-139.

58-1-224. Discharges.

(a) An enlisted person may be discharged from the national guard prior to the expiration of that person's term of enlistment under such conditions as may be prescribed by applicable laws and regulations of the United States and by parts 1, 2 and 4-6 of this chapter and regulations issued pursuant thereto.

(b) An enlisted person discharged from the national guard shall receive a discharge in writing in such form and of such type of classification as may be prescribed by applicable laws and regulations of the United States and by regulations issued pursuant to parts 1, 2 and 4-6 of this chapter.

History.
Acts 1970, ch. 596, § 43; T.C.A., § 7-140.

58-1-225. Absence without leave.

When an enlisted person of the national guard is absent without leave or misses all scheduled drills without proper authority for five (5) drills, within any twelve-month period and there is reason to believe that the enlisted person does not intend to return, the enlisted person may be discharged, or if the

enlisted person is an obligor, such person may be ordered to extended active duty as provided by appropriate federal regulation.

History.
Acts 1970, ch. 596, § 44; T.C.A., § 7-141.

58-1-226. Exemption from civil process and arrest.

Except for the commission of treason, a felony or a breach of the peace, the officers and enlisted personnel of the national guard shall be exempt from service of civil process and from arrest while actually engaged in the following activities:

(1) Drill;
(2) Instruction;
(3) Voluntary aid and assistance; or
(4) Other military duty.

History.
Acts 1970, ch. 596, § 89; 1978, ch. 830, § 3;
T.C.A., § 7-142.

58-1-227. Relief from civil or criminal liability.

(a) Members of the national guard ordered into the active service of the state, pursuant to § 58-1-106, shall receive the same immunity afforded by law to state employees for acts done in the performance of their duty while at their post of duty. When an action or proceeding of any nature shall be commenced in any court by any person against any member of the national guard for any act done by the guard member in guard member's official capacity in the discharge of guard member's assigned duty under parts 1, 2 and 4-6 of this chapter, or an alleged omission by guard member to do an act which it was the guard member's duty to perform or against any person acting under lawful authority or orders or by virtue of any warrant issued by guard member pursuant to law, the governor shall designate counsel to represent and defend such guard member. All compensation of such counsel and all costs and expenses in connection with the action shall be payable from the funds appropriated to the military department.

(b) Officers and enlisted personnel of the national guard who engage in voluntary aid and assistance shall receive the same immunity afforded by law to state employees for actions taken in the performance of their duty while at their post of duty. When an action is commenced in any court by any person against any officer or enlisted personnel of the national guard for actions in the course of voluntary aid and assistance, counsel shall be designated as provided by title 8, chapter 42 to represent and defend such guard member. All compensation of such counsel and all costs and expenses in connection with the action shall be payable from the funds appropriated to the military department.

(c)(1) Notwithstanding § 39-11-605 or § 39-11-622(a)(1)(B), if a member of the national guard uses force against another, including by discharging a personally owned firearm, and a civil cause of action is commenced against the national guard member alleging that the use of force resulted in the

death or injury of, or property damage to, the person commencing the action, the national guard member shall have civil immunity with respect to any person commencing an action that is based on the national guard member's use of force, if the court in which the action is filed determines the national guard member:

(A) Used force against the person bringing the action that was justifiable self-defense, in accordance with § 39-11-611, or justifiable defense of others, in accordance with § 39-11-612;

(B) Was on duty or in uniform at the time force was used; and

(C) If the use of force involved the discharge of a personally owned handgun, was authorized to possess or carry a handgun pursuant to § 39-17-1351 and authorized by the military department to carry a personally owned handgun while on-duty or in uniform.

(2)(A) As soon as possible after the national guard member's use of force, the attorney general and reporter shall investigate and determine whether the national guard member's use of force complied with the requirements of subdivisions (c)(1)(A)-(C). If the attorney general determines that the use of force was justifiable, the national guard member shall receive legal counsel designated as provided by title 8, chapter 42, to represent the national guard member if any action is commenced by any person against the national guard member that is based upon the national guard member's justified use of force.

(B) If the attorney general and reporter determines the national guard member's use of force was not justified and declines to provide legal counsel, the provision of § 39-11-622(b) shall be applicable and available to the national guard member.

(3) If any civil or administrative action is brought against the national guard member that is based on the national guard member's use of force, the trier of fact shall first determine if the use of force complied with the requirements of subdivisions (c)(1)(A)-(C). If the trier of fact finds the national guard member's use of force did comply, the action against the national guard member shall be dismissed.

History.
Acts 1970, ch. 596, § 90; 1978, ch. 830, § 4; T.C.A., § 7-143; Acts 2016, ch. 778, § 1.

Attorney General Opinions.
Immunity of Tennessee National Guardsmen on active duty, OAG 07-003 (1/8/07).

58-1-228. National Guard Force Protection Act of 2016.

(a) This section shall be known and may be cited as the "National Guard Force Protection Act of 2016".

(b) The department of military may implement the following force protection enhancements at national guard facilities:

(1) Aiphones;

(2) Shatter resistant films;

(3) Cameras;

(4) Magnetic locks with keypads;

(5) Mobile ballistic shields;

(6) Barriers, including:

(A) Permanent bollards;

(B) Automatic bollards;

(C) Manual removable bollards; and

(D) Decorative barriers;

(7) Privacy screens; and

(8) Any other force protection enhancement deemed necessary by the department.

(c) The adjutant general shall inform the general assembly upon completion of the force protection enhancements required pursuant to this section.

History.
Acts 2016, ch. 747, §§ 1-3.

Code Commission Notes. By authority of the Code Commission, Acts 2016, ch. 747, §§ 1-3 were codified as a new section. Acts 2016, ch. 747, § 1 was codified as § 58-1-228(a), Acts 2016, ch. 747, § 2 was codified as § 58-1-228(b) and Acts 2016, ch. 747, § 3 was codified as § 58-1-228(c).

Compiler's Notes.
Former § 58-1-228 (Acts 1970, ch. 596, § 91; T.C.A., § 7-144), concerning jury duty exemption for national guard personnel, was repealed by Acts 2008, ch. 1159, § 5, effective January 1, 2009.

Acts 2016, ch. 747, § 4, provided that the act, which enacted this section, shall not be construed to be an appropriation of funds, and no funds shall be obligated or expended pursuant to this act unless the funds are specifically appropriated by the general appropriations act.

58-1-229. Exemption from duty on election day — Influencing election — Penalty.

(a) No officer or enlisted personnel of the national guard, except in compliance with orders of the governor, shall be required to perform military duty on a day designated for the holding of any primary or general election in any city or civil district in the state; nor shall any officer or enlisted man of the national guard use military rank or status in any way to influence the result of any such election.

(b) Whoever violates this section is guilty of a Class C misdemeanor.

History.
Acts 1970, ch. 596, § 92; T.C.A., § 7-145; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

State guard influence of elections prohibited, § 58-1-402.

58-1-230. Awards in case of death or injury.

(a) **Death.**

(1) The division of claims and risk management is authorized after proper investigation to pay a death benefit to or for the survivor prescribed in subdivision (a)(3), upon receiving certification by the adjutant general of the death of any member of the national guard who:

(A) Dies while performing full time training, or duty under §§ 58-1-106, 58-1-108 and 58-1-205; or

(B) Dies within one hundred twenty (120) days thereafter if death resulted from injury sustained or disease incurred or aggravated while performing such training or duty or returning from the same.

(2) The death benefit so paid shall be the same as those as are now

provided under the Workers' Compensation Law of this state, compiled in title 50, chapter 6, or as that law shall be hereinafter amended; provided, however, that the benefit paid shall be based on and determined by the percentage of the average weekly pay the guard member would have received while on active federal duty; and provided further, that no benefit so paid shall be less than one hundred thousand dollars ($100,000), and at the option of the beneficiaries, the amount shall be paid in a lump sum and without being commuted.

(3)(A) The benefit shall be paid to or for the benefit of the living survivor highest on the following list:

(i) Surviving spouse;

(ii) Children including children by adoption and illegitimate children who are members of the decedent's household and/or who have been acknowledged;

(iii) Parents;

(iv) Brothers and sisters in equal shares.

(B) No further beneficiaries shall be recognized.

(4) The death benefit herein provided shall be payable without regard to legal liability and the state shall not be entitled to subrogation in any instance.

(b) **Injuries.** When any member of the national guard is injured while performing duty as set forth in subdivision (b)(1), the division of claims and risk management shall compensate guard member in the same manner and to the same extent as now provided under the Workers' Compensation Law of this state; provided, however, that:

(1) The compensation so paid shall be based upon and determined by the percentage of the average weekly pay the guard member would have received while on active duty;

(2) The compensation so received shall in no event be less than fifty dollars ($50.00) per week; and

(3) The compensation shall be payable in a lump sum without commutation.

(c) **Coordination of Benefits.** For the purpose of coordinating benefits payable from the state and from the federal government as the result of the death or injury of a member of the Tennessee national guard, any workers' compensation benefits provided by the state shall be reduced by the amount of any medical care, hospitalization, or incapacitation pay benefits paid by the federal government to such guard member or statutory beneficiary as the result of injury or death.

(d) **Investigation.**

(1) No benefits for death or injury shall be paid unless and until a board of Tennessee national guard officers appointed by the adjutant general consisting of not less than three (3) officers, at least one (1) of which shall be a medical officer, shall submit, after a full evidentiary hearing according to military regulations, its findings and recommendations for approval, certification, and transmittal by the adjutant general to the division of claims and risk management, that the deceased or injured guard member was in the course of employment at the time of his death or injury or when the disease

or injury which produced death was incurred.

(2) Upon receipt of the board's report and recommendations of the adjutant general, the division of claims and risk management shall determine whether the injury or death of such member of the national guard arose out of and in the course of employment under the Workers' Compensation Law of this state and, if appropriate, act upon such claim.

(e) **Appeal.** Any guard member, or any statutory beneficiary as hereinabove enumerated, whose claim is denied by the division of claims and risk management shall have the right to file the guard member's claim with the claims commission within ninety (90) days of the date of such denial. Any decision of the claims commission pertaining to the death or injury of a member of the national guard shall be subject to judicial review pursuant to the procedure for workers' compensation cases under § 50-6-225.

History.

Acts 1970, ch. 596, § 67; 1976, ch. 756, § 1; T.C.A., § 7-147; Acts 1981, ch. 449, § 2; 1984, ch. 972, § 19; 1986, ch. 626, § 8; 2006, ch. 985, § 1; 2017, ch. 271, § 1.

Compiler's Notes.

Subsection (d) of this section may be affected by T.R.A.P. 3, 24.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Cross-References.

Workers' Compensation, title 50, ch. 6, parts 1-4.

Law Reviews.

Remedies other than the Tennessee Uniform Administrative Procedures Act "Contested Case" Approach to Dealing with State and Local Governmental Action (John Beasley), 13 Mem. St. U.L. Rev. 619 (1984).

Attorney General Opinions.

Definition of "course of employment" for purposes of eligibility for benefits under T.C.A. § 58-1-230, OAG 03-085 (7/09/03).

NOTES TO DECISIONS

Analysis

1. Subrogation Agreements.
2. Appeal.
3. Injury on Federal Active Duty.

1. Subrogation Agreements.

The board of claims may condition benefits upon the claimant entering a subrogation agreement requiring claimant to pay back to the board any recovery by claimant against a third party. Norman v. Tennessee State Board of Claims, 533 S.W.2d 719, 1975 Tenn. LEXIS 547 (Tenn. 1975).

2. Appeal.

The appeal provided by this section is not unconstitutional as being invidious class legislation even though government employees other than national guardsmen have no such right to appeal. Norman v. Tennessee State Board of Claims, 533 S.W.2d 719, 1975 Tenn. LEXIS 547 (Tenn. 1975).

3. Injury on Federal Active Duty.

Where a member of the state national guard is injured while exclusively on federal active duty, he is not a state employee for workers' compensation coverage purposes. Yount v. State, 774 S.W.2d 919, 1989 Tenn. LEXIS 375 (Tenn. 1989).

58-1-231. Service medals.

A service medal shall be issued to each officer or enlisted member of the national guard at the completion of five (5) years of honorable service therein, continuous or otherwise, with a clasp indicating such service affixed thereto and for each additional five (5) years of like service a clasp to be affixed to such medal; provided, that all members of the national guard who were active members as officers or enlisted personnel of the military or naval forces of the

United States in time of war and who received honorable discharge from such service shall be issued an additional clasp indicative of such wartime service to be affixed to the medal hereinabove provided.

History.
Acts 1970, ch. 596, § 94; T.C.A., § 7-148.

Cross-References.
Special license plates for active national guard members, § 55-4-255.

58-1-232. Dress uniforms.

Any organization of the national guard may, with the approval of the commander in chief, adopt and provide, at the expense of individual members thereof, a dress uniform for special occasions; such adopted uniform shall not be worn except as may be prescribed by the commander in chief.

History.
Acts 1970, ch. 596, § 96; T.C.A., § 7-149.

Cross-References.
Governor as commander in chief, § 58-1-105.
Officer's uniforms, § 58-1-214.

58-1-233. Membership in national guard associations.

The adjutant general is authorized and empowered to maintain membership for the Tennessee national guard in the national guard association of the United States or any similar organization, and with the approval of the governor is authorized to incur the usual expenses incident to such membership, which expenses will be included in the annual budget of the military department and paid from the appropriations provided for that department.

History.
Acts 1970, ch. 596, § 86; T.C.A., § 7-150.

58-1-234. Authority to administer oaths.

The following officers of the national guard shall have power to administer oaths for the purposes of military administration, including military justice, and affidavits may be taken for such purposes before such officers:

(1) All company, battery, squadron and similar unit commanders;

(2) All adjutants, assistant adjutants, and personnel officers;

(3) All staff judge advocates and legal officers and acting or assisting staff judge advocates and legal officers;

(4) All officers detailed to conduct an investigation, or to take a statement or deposition; and

(5) All commissioned officers are authorized to administer oaths for enlistment and appointment.

History.
Acts 1970, ch. 596, § 98; T.C.A., § 7-151.

Cross-References.
Commissioned officers in active service of the armed forces of the United States authorized to take oaths and acknowledgments, §§ 58-1-605, 58-1-607.
Oath of enlistment, § 58-1-222.

58-1-235. Patrons of national guard.

Any person, who contributes to a company fund of the Tennessee national guard the sum of ten dollars ($10.00) or more for the period of one (1) year shall be known as a patron of the national guard. The names of all such patrons, together with the amount contributed by each, shall be reported to the adjutant general who shall issue an appropriate card identifying such contribution as a friend, patron and supporter of the national guard.

History.
Acts 1957, ch. 320, § 77; T.C.A., § 7-152.

58-1-236. Burial flag for family of deceased member of national guard.

(a) The adjutant general shall present to the family of each eligible, deceased member of the national guard a Tennessee state flag, appropriate for use as a burial flag, upon application of a member of the family of the deceased guard member.

(b) The adjutant general shall prepare an application form to be used to determine the eligibility of the deceased for the burial flag and shall furnish the form to the senior full-time employee in each armory.

(c) The family of any individual who serves at least one (1) year in the national guard and who at the time of death is an active, honorably discharged, or retired member of the national guard is eligible to receive a burial flag.

(d) The adjutant general may, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, promulgate rules to implement this section.

(e) The adjutant general shall obtain flags from the federal government when available. If flags from the federal government are not available, the adjutant general shall purchase the flags from funds appropriated to the military department.

History.
Acts 2017, ch. 430, § 1.

PART 3

MILITIA

58-1-301. Call to active service — Enrollment of militia.

The governor, with the advice and consent of the general assembly, and pursuant to the laws of the United States, shall call the militia, or any portion thereof, into active service at any time that public safety requires it; provided, that the governor is authorized to have enrollment made of all persons of this state subject to military duty or draft into the military service, and is directed, at such time as the necessity seems imminent, to cause each county assessor to make such enrollment of the assessor's respective county, stating the name, address, age, and previous military or naval experience of all persons so enrolled, if any, and to furnish copies of such enrollment to the respective county clerk, and the adjutant general. Each county shall furnish all blank

forms and bear all expenses necessary to enrollment of its citizens. The governor shall have the power, in the governor's discretion, to appoint an enrolling board of three (3) members in each county to act in lieu of the county assessor, which board shall make such enrollments as directed at the time by the governor. The governor shall have the power, and is directed, to issue, at the proper time, regulations in detail governing the entry or draft of enrolled citizens into the military service, and their assignments to units.

History.
Acts 1933, ch. 128, § 25; C. Supp. 1950, § 1003.26 (Williams, § 845.25); impl. am. Acts 1978, ch. 934, §§ 22, 36; T.C.A. (orig. ed.), § 7-202.

Cross-References.
Calling militia into service, Tenn. Const., art. III, § 5.
Call to active duty of military forces in general, § 58-1-106.
Composition of militia and designation as part of military forces of state, § 58-1-104.
Exemption of volunteer firemen from military duty in time of peace, § 7-38-104.
Governor may order military force to county on application of sheriff, § 38-3-112.
Military forces of state in general, § 58-1-104.
Performance of military duty, Tenn. Const., art. I, § 28, art. IV, § 1.
Reserve organization of the state guard authorized, § 58-1-410.

Textbooks.
Tennessee Jurisprudence, 18 Tenn. Juris., Military, § 9.

DECISIONS UNDER PRIOR LAW

1. Calling Out Militia.
Tenn. Const., art. III, § 5, provides that the militia shall not be called into service, except in case of rebellion or invasion, and then only when the general assembly shall declare by law that the public safety requires it. Green v. State, 83 Tenn. 708, 1885 Tenn. LEXIS 99 (1885).

58-1-302. Failure to appear for service.

Any person subject to call into active military service of this state who fails to appear at the time and under conditions designated by the governor for entry or draft into active service shall be considered as a deserter and treated accordingly.

History.
Acts 1933, ch. 128, § 27; C. Supp. 1950, § 1003.28 (Williams, § 845.27); T.C.A. (orig. ed.), § 7-203.

58-1-303. Election and appointment of officers.

All officers of the militia exercising command of line units shall be elected by ballot, and the governor, immediately upon calling the militia to active duty, shall issue appropriate rules and regulations for such elections, and appoint such number of staff officers in proper grades as may be required by the militia; provided, that persons eligible for commissions in the militia shall be the same as provided for the national guard.

History.
Acts 1933, ch. 128, § 28; 1937, ch. 249, § 6; C. Supp. 1950, § 1003.29 (Williams, § 845.28); T.C.A. (orig. ed.), § 7-204.

Cross-References.
Appointment and commissioning of all officers of the military forces by the governor, § 58-1-105.
Election of militia officers, Tenn. Const., art. VIII, § 1.

58-1-304. Uniform of militia.

The governor is authorized and directed, at the proper time, to issue the necessary regulations governing the uniform of the militia of this state; provided, that such uniform must comply with the laws of the United States.

History.
Acts 1933, ch. 128, § 26; C. Supp. 1950, § 1003.27 (Williams, § 845.26); T.C.A. (orig. ed.), § 7-205.

58-1-305. Transfer of militia to national guard.

The governor, with the advice and consent of the general assembly, and in accordance with the orders of the president, may, after issuing call of the militia into active service, transfer the entire militia, or any portion thereof, to the national guard and treat it under the National Defense Act.

History.
Acts 1933, ch. 128, § 29; C. Supp. 1950, § 1003.30 (Williams, § 845.29); T.C.A. (orig. ed.), § 7-206.

Compiler's Notes.
The National Defense Act, referred to in this section, is codified at various locations in U.S.C. titles 10 and 32.

58-1-306. Disbanding of militia.

The governor, having called forth the militia into active service, is authorized to disband it, in whole or in part, as public interest and safety require, unless otherwise required by the government of the United States.

History.
Acts 1933, ch. 128, § 30; C. Supp. 1950, § 1003.31 (Williams, § 845.30); T.C.A. (orig. ed.), § 7-207.

PART 4

DEFENSE FORCE

58-1-401. Governor authorized to enlist state guard.

Whenever the president of the United States shall call any part of the national guard of this state into active federal service, the governor is authorized to enlist, organize, maintain, equip and discipline a volunteer defense force, other than the national guard, to be known as the Tennessee state guard.

History.
Acts 1970, ch. 596, § 45; T.C.A., § 7-401; Acts 1985, ch. 36, § 1; 1998, ch. 584, § 5.

Cross-References.
Call of state guard to active duty, § 58-1-106.

Attorney General Opinions.
When activated by the governor to active state duty and operating in the course of that duty, the Tennessee state guard constitutes an arm of the state and enjoys the sovereign immunity of the state of Tennessee; thus, if monthly drills and training opportunities are in the course of active duty, the state guard, under the order, control and supervision of the governor, is immune from suit, OAG 02-011 (1/10/02).

58-1-402. Membership of state guard — Distinct from national guard — Service outside state or relating to elections — Limitation on consecutive years of advisory service.

The state guard shall be composed of such individuals between sixteen (16) and seventy-five (75) years of age as shall volunteer for service therein. The state guard shall be in addition to and distinct from the national guard organized under existing law. The organization shall not be required to serve outside the boundaries of this state and shall not be used to supervise, hold, guard or investigate any election or primary election held in this state. Provisionally, United States military and Tennessee state guard prior service applicants, Tennessee state guard active duty personnel and Tennessee state guard retirees shall not exceed five (5) consecutive years of advisory service.

History.
Acts 1970, ch. 596, § 46; T.C.A., § 7-402; Acts 1985, ch. 36, §§ 2, 3; 1998, ch. 584, § 6; 1999, ch. 17, § 1.

Cross-References.
National guard influence of elections prohibited, § 58-1-229.

58-1-403. — 58-1-404 [Reserved.]

58-1-405. Powers of governor in supervision of guard.

The governor is authorized to appoint and commission necessary officers for the state guard; to prescribe rules and regulations governing the enlistment, organization, administration, pay, equipment, discipline and discharge of the personnel of the state guard; to obtain by grant, requisition, or purchase such necessary arms and equipment as may be secured from the department of defense, or procure from other sources, the necessary arms and equipment to maintain and equip the state guard; to make available to the state guard the facilities of the state armories and their equipment and such other state premises or property as may be available for the purpose of drill, housing and instruction; to rent, if necessary, such additional property as may be required for drilling, housing and instruction.

History.
Acts 1970, ch. 596, § 49; T.C.A., § 7-405; Acts 1985, ch. 36, §§ 4, 5; 1998, ch. 584, § 7.

Cross-References.
Armories and other military property and equipment, title 58, ch. 1, part 5.

Governor is commander in chief, Tenn. Const., art. III, § 5; § 58-1-105.

58-1-406. Liability to federal military service not affected.

No person shall solely by reason of enlistment or commission in any state forces be exempt from military service under the law of the United States.

History.
Acts 1970, ch. 596, § 50; T.C.A., § 7-406.

58-1-407. Oath of members.

Each and every member joining the state guard shall, in addition to the oath

required by law to be taken by officers, take and subscribe to the following oath: "I do solemnly swear that I will well and faithfully perform my duties as a member of the Tennessee state guard to the best of my ability, and I do solemnly swear that I will bear true faith and allegiance to the state of Tennessee and that I will serve the state of Tennessee honestly and faithfully against all enemies, whomsoever, and that I will obey the orders of the governor and the officers placed over me, according to law."

History.
Acts 1970, ch. 596, § 51; T.C.A., § 7-407; Acts 1985, ch. 36, § 6; 1998, ch. 584, § 8.

58-1-408. Organization, composition and strength.

The governor may organize, activate, increase, change, divide, consolidate, disband, reactivate or reorganize any unit, headquarters, staff or cadre of the state guard, and may prescribe the composition and types of units, the type of organization and the system of drill or instruction to be used in training such units; and for such purposes the governor is authorized to fix, increase or decrease the strength of any unit, headquarters, staff or cadre of the state guard, including the number of commissioned officers, warrant officers, noncommissioned officers and other enlisted personnel of any grade in any such unit, headquarters, staff or cadre, and to alter the grades of officers, warrant officers and noncommissioned officers.

History.
Acts 1970, ch. 596, § 52; T.C.A., § 7-408; Acts 1985, ch. 36, § 7; 1998, ch. 584, § 9.

58-1-409. Duties, privileges and immunities.

All duties imposed by the military law or other statutes of the state or by regulations issued hereunder, upon units, commissioned officers, warrant officers, and enlisted personnel respectively of the national guard are hereby imposed upon the units, commissioned officers, warrant officers and enlisted personnel respectively of the state guard, and all rights, privileges and immunities conferred by the military law or other statutes of the state or by regulations issued hereunder, upon the units, commissioned officers, warrant officers and enlisted personnel respectively of the national guard are hereby conferred upon the units, commissioned officers, warrant officers and enlisted personnel respectively of the state guard as otherwise prescribed in parts 1, 2 and 4-6 of this chapter.

History.
Acts 1970, ch. 596, § 53; T.C.A., § 7-409; Acts 1985, ch. 36, § 8; 1998, ch. 584, § 10.

Attorney General Opinions.
When on active state duty and in the course of that duty, the members of the Tennessee state guard have immunity; there is no immunity available, however, for training or other activities outside the scope of active duty, OAG 02-011 (1/10/02).

58-1-410. Reserve organization.

During such time as the state guard is not activated, the adjutant general is

authorized and empowered, on the approval of the governor, to set up and maintain a reserve organization of the state guard upon a voluntary basis under such system as to the adjutant general may seem most feasible in order to provide means for the creation of an armed force in case the national guard of the state be again called into federal service.

History.
Acts 1970, ch. 596, § 54; T.C.A., § 7-410; Acts 1985, ch. 36, § 9; 1998, ch. 584, § 11.

Cross-References.
Militia enrollment authorized, § 58-1-301.

58-1-411. Compensation.

Members of the state guard when assigned to state military duty by the commander in chief, or when ordered to active state service pursuant to § 58-1-106, shall be paid from the funds appropriated, or otherwise legally made available to the military department, at the rate of pay and allowances as prescribed by the adjutant general.

History.
Acts 1985, ch. 36, § 11; 1998, ch. 584, § 12.

Attorney General Opinions.
When in a non-paid status, state guard members enjoy neither immunity from suit, nor workers' compensation benefits, OAG 05-112 (7/18/05).

58-1-412. Governor's authority and power to call members of the state guard to active state duty with the member's consent.

The governor is authorized and empowered to call members of the state guard to active state duty with the member's consent, for the performance of any official duty in connection with state guard activities. Inactive reserve status may include voluntary unpaid state service for assistance to local authorities during times of disaster, or other times of crisis, when requested from and approved by the adjutant general by city, county or metropolitan local authorities.

History.
Acts 2013, ch. 364, § 1.

PART 5

MILITARY PROPERTY — ARMORIES

58-1-501. Authority to acquire lands.

The governor is authorized and empowered on behalf of the state to acquire by lease, purchase and condemnation under the laws of eminent domain, such land as the governor in times of emergency may deem necessary to provide adequate facilities for the protection and defense of the state and the nation.

History.
Acts 1941, ch. 2, § 1; mod. C. Supp. 1950, § 186.3; T.C.A. (orig. ed.), § 7-507.

Cross-References.
Condemnation of land, § 58-1-504.

Real property for military department, acquisition, disposal and administration by adjutant general, § 58-1-506.

58-1-502. Proclamation of emergency.

It shall be the duty of the governor to announce publicly by proclamation filed with the secretary of state the emergency necessitating the acquisition of such land before exercising the authority vested in the governor by § 58-1-501.

History.
Acts 1941, ch. 2, § 2; C. Supp. 1950, § 186.4; T.C.A. (orig. ed.), § 7-508.

58-1-503. Payment for lands.

The lands so acquired in accordance with §§ 58-1-501 — 58-1-505 will be paid for out of the funds of the state not otherwise appropriated.

History.
Acts 1941, ch. 2, § 4; C. Supp. 1950, § 186.6; T.C.A. (orig. ed.), § 7-509.

58-1-504. Condemnation of land.

If it is necessary to institute condemnation proceedings to acquire lands authorized to be acquired by § 58-1-501, such proceedings shall be instituted in the name of the state of Tennessee against the property owner or owners, and the property shall be condemned under the general statutes providing for condemnation of lands for public purposes and containing the law of eminent domain.

History.
Acts 1941, ch. 2, § 3; C. Supp. 1950, § 186.5; T.C.A. (orig. ed.), § 7-510.

Cross-References.
General eminent domain law, title 29, ch. 16.
Private property not to be taken for public use without just compensation, Tenn. Const., art. I, § 21.

Textbooks.
Tennessee Jurisprudence, 10 Tenn. Juris., Eminent Domain, § 9.

58-1-505. Lease to United States.

The governor is authorized and empowered to lease lands acquired in accordance with §§ 58-1-501 — 58-1-504, to the United States government when such action is deemed by the governor to be advantageous to the defense of the state and the nation. A lease of such land executed by the governor in the name of the state of Tennessee will be adequate to vest in the United States government such leasehold rights as shall therein be set out.

History.
Acts 1941, ch. 2, § 5; mod. C. Supp. 1950, § 186.7; T.C.A. (orig. ed.), § 7-511.

58-1-506. Acquisition, disposal and administration of real property by adjutant general — Authority to enter into cooperative agreements.

The adjutant general, under the direction and supervision of the governor, shall administer all real property under the jurisdiction of the military department:

(1) When it is deemed desirable to acquire additional real property or any interest therein for the activities of the military department and such property shall be acquired by the adjutant general when so authorized by the general law for other state departments and agencies;

(2) When it is deemed desirable to dispose of any real property or any interest therein under the jurisdiction of the military department, the adjutant general shall execute the conveyance on behalf of the state, but the conveyance shall be approved by such other officials as may be required by law to approve conveyances of the state's real property; provided, that in no event shall real property under the jurisdiction of the military department be disposed of without the approval of the governor, and such real property shall be disposed of in the way and manner and in accordance with such procedures as provided by the general law as to the disposition of other real property belonging to the state;

(3) The adjutant general, with the approval of the governor, may enter into cooperative agreements with the federal government and its local governmental subdivisions or agencies in connection with all phases of the activities of the military department including the joint use and occupancy of buildings and grounds including, but not limited to, aviation or airport facilities. Such agreements and contracts including, but not limited to, licenses and leases which have heretofore been entered into by the adjutant general and/or the governor are hereby authorized and validated.

History.
Acts 1970, ch. 596, § 85; T.C.A., § 7-513.

Cross-References.
Disposition of state real property, § 12-2-112.
Land for defense of state and nation, governor authorized to acquire, §§ 58-1-501 — 58-1-505.
National guard armory accommodations, § 58-1-206.
State acquisition and maintenance of facilities not adequately furnished by United States, counties or municipal corporations, see § 58-1-206.
State guard armories, facilities, property and equipment, § 58-1-405.

58-1-507. "Armory" defined.

"Armory," whenever used in §§ 58-1-507 — 58-1-512, includes any building, buildings, aircraft hangars, offices, quarters, or other facilities, and real property provided for and devoted to the training and housing of the national guard.

History.
Acts 1970, ch. 596, § 78; T.C.A., § 7-514.

58-1-508. Plans for armories — Acceptance and use of funds.

(a) When funds are made available, the adjutant general, with the approval of the state building commission and in accordance with the policies and procedures of the commission, is vested with the power, jurisdiction and authority to employ architects, contractors and other employees and to cause proper plans and specifications to be prepared or drafted for armories and facilities and their equipment and furnishings. The adjutant general, with the approval of the governor, is further empowered to accept any aid, financial or otherwise, from any municipality and/or county of this state, as well as federal,

in carrying out the purpose of §§ 58-1-507 — 58-1-512 and constructing such armories and facilities.

(b) Funds made available to the adjutant general for the adjutant general's use in carrying out the purposes and objects mentioned in §§ 58-1-507 — 58-1-512 shall be expended therefor, as when and where directed by the adjutant general, with the approval of the governor.

History.
Acts 1970, ch. 596, § 80; 1971, ch. 99, § 2; T.C.A., § 7-516; Acts 1990, ch. 734, § 1.

Cross-References.
Agreements for private development, construction, and operation of facilities, § 12-2-116.

58-1-509. Location of armories throughout state — Acceptance of money or sites from municipalities or counties authorized.

(a) The adjutant general, with the approval of the governor, shall have the right to provide armories throughout the state to be located at most advantageous points in the discretion of the adjutant general, with the approval of the governor, and the adjutant general, with approval of the governor, may accept from any municipality or county donations, either of money or of sites or both for such armory, to be used in the construction thereof. The location of the armory, plans, specifications and costs thereof shall in all instances be approved in advance by the adjutant general, with the approval of the governor, and in writing; and any available funds appropriated or allocated under the law for the purpose of such construction shall be used by the adjutant general, with approval of the governor, for that purpose.

(b) The adjutant general, with the approval of the governor, shall also have the right to provide armories, both within and without the corporate limits of the cities and towns, and municipalities are authorized to procure real property outside their corporate limits as sites for such armories, and to expend their tax revenues and other funds for such purposes. The municipalities and counties are further authorized to contribute to and participate in the construction costs of such armories and are authorized to expend their tax revenues and other funds for such purposes.

History.
Acts 1970, ch. 596, § 81; 1971, ch. 99, § 3; T.C.A., § 7-517.

58-1-510. Appropriations of money or property by counties or municipal corporations for defense.

The governing authorities of the counties and municipal corporations of the state are authorized to make appropriations from the funds of such counties and municipal corporations, and are authorized to lease, lend, sell or donate property, both real and personal, of such counties and municipal corporations, to the state of Tennessee and the federal government for purposes of local, state and national defense and for the use of the national guard.

History.
Acts 1970, ch. 596, § 82; T.C.A., § 7-518.

58-1-511. Title to armories.

The title to all armories procured under §§ 58-1-507 — 58-1-512 shall be taken in the name of the state.

History.
Acts 1970, ch. 596, § 83; T.C.A., § 7-519.

58-1-512. Adjutant general in charge of armories — Rental income.

(a) All armories, arsenals, camps, ranges, bases and other facilities owned, leased or maintained by the state or by the United States for the use of the national guard and all activities conducted therein shall be under the general charge and control and shall be regulated by the adjutant general.

(b) When only one (1) unit occupies any of the facilities hereinabove set forth, the commander of that unit shall have direct charge and control thereof and shall be known and designated as station commander.

(c) Where two (2) or more units are stationed in any such facility, the adjutant general shall designate the officer to have direct charge and control thereof, and such officer shall likewise be known as the station commander.

(d) The station commander shall apportion the quarters and facilities therein to be occupied by each unit and shall regulate the use and be responsible for the care thereof.

(e) All income derived from the use of armories shall be retained by the station commander and shall be deposited in a "station commander's upkeep and maintenance fund" and shall be used, under regulations promulgated by the adjutant general, for maintenance, repair, upkeep, alteration, equipment, modification or improvement of the armory, facilities or area adjacent thereto.

History.
Acts 1970, ch. 596, § 84; T.C.A., § 7-520.

58-1-513. Purchase and issue of property — Disposal of surplus and obsolete property.

(a) Under the direction of the governor, the adjutant general shall authorize the purchase of such property as may be required for the use of the military department, all such purchases to be made through the state purchasing director.

(b) No property shall be issued to persons or organizations other than those belonging to the national guard and such forces as may be organized pursuant to parts 1, 2 and 4-6 of this chapter. Obsolete and/or surplus military property of the state, however, may be issued or sold by the adjutant general, with the approval of the governor, to municipalities and to educational, patriotic and charitable organizations under such conditions as may be prescribed by regulations issued pursuant to parts 1, 2 and 4-6 of this chapter.

History.
Acts 1970, ch. 596, § 23; T.C.A., § 7-521.

Cross-References.
Fraudulent disposition of military property, penalty, § 58-1-630.
Unauthorized sale or disposition of military property and equipment, § 58-1-634.
Unlawful dealing in military property, penalty, § 58-1-603.
Wrongful disposition of military property, penalty, § 58-1-623.

58-1-514. Federal property — Care and custody.

Federal property, issued to the Tennessee national guard, shall not be used for any purpose other than that for which such was issued, and shall not be loaned for any other activity, either state, civilian, or federal, except to the extent authorized by appropriate regulations. All such property shall be deposited in the armories, headquarters, warehouses, arsenals, or other facilities provided for the purpose and shall not be removed therefrom except for service under proper authority and orders.

History.
Acts 1970, ch. 596, § 24; T.C.A., § 7-522.

Cross-References.
Responsibility for military property and funds, § 58-1-515.

58-1-515. Responsibility for military property and funds — Collection from member or employee — Action by attorney general.

(a) Military property of the state and of the United States shall be issued, safeguarded, maintained, accounted for, inventoried, inspected, surveyed and disposed of as provided in applicable laws and regulations issued thereunder and regulations issued pursuant to parts 1, 2 and 4-6 of this chapter.

(b) When state-owned military property is lost, damaged or destroyed through the negligence or fault of a member or employee of the national guard, the amount determined as the value of such property or the cost of repairing the same may be collected from any pay or allowance due or to become due to the member or employee of the national guard from the state, in addition to the remedies herein prescribed.

(c) An action may be maintained in the name of the state in any court having jurisdiction thereof by the attorney general and reporter, upon the request of the adjutant general, to recover, from a member or former member of the national guard found responsible for any state or federal military property lost, damaged or destroyed through negligence or fault, the amount determined as the value of such property or the cost of repairing the same.

History.
Acts 1970, ch. 596, § 27; T.C.A., § 7-523.

Cross-References.
Fraudulent disposition of property furnished or intended for national guard, § 58-1-630.
Loss, damage, destruction or wrongful disposition of military property by state military forces personnel is a felony punishable as theft, § 58-1-623.
Unauthorized sale or disposition of military property or equipment, § 58-1-634.
Unlawful dealing in military property, penalty, § 58-1-603.

PART 6

ARMED FORCES — PENAL PROVISIONS

58-1-601. Rights-of-way — Highways — Exceptions.

Troops of the United States or of the Tennessee national guard parading or performing any duty according to law shall have the right-of-way on any street or highway over which they may pass, except that the carriage of the United States mail, legitimate functions of police departments, and the operations of fire departments shall not be interfered with thereby.

History.
Acts 1970, ch. 596, §§ 87, 88; T.C.A., § 7-301; Acts 2013, ch. 308, § 17.

Cross-References.
Ferries and toll bridges free to specified persons and their baggage, § 54-13-104.

NOTES TO DECISIONS

1. Construction.
Guardsman's convictions for loss of military property and fraud against the government in violation of T.C.A. §§ 58-1-611 — 58-1-633 were dismissed as guardman was not in a drill or duty status at the time the crime occurred; T.C.A. §§ 58-1-611 — 58-1-633 do the guardsman not contemplate an ongoing or continuing crime, but the commission of crimes which occur only during a drill or status duty. State v. Morrow, 72 S.W.3d 337, 2001 Tenn. Crim. App. LEXIS 884 (Tenn. Crim. App. 2001).

58-1-602. Unlawful wearing of uniform or insignia. [Repealed]

History.
Acts 1970, ch. 596, § 95; T.C.A., § 7-302; Acts 1989, ch. 591, § 113, repealed by Acts 2018, ch. 914, § 3, effective July 1, 2018.

Compiler's Notes.
Section 58-1-602, concerning the unlawful wearing of uniform or insignia, is repealed by Acts 2018, ch. 914, § 3, effective July 1, 2018.

58-1-603. Unlawful traffic in military property.

Any person who shall purchase, receive in pledge, retain, or possess any article of arms, clothing, equipment, supply or other thing furnished and intended for the military service, unless lawfully issued to such person, is guilty of theft and punishable accordingly.

History.
Acts 1970, ch. 596, § 25; T.C.A., § 7-303; Acts 1989, ch. 591, § 66.

Cross-References.
Fraudulent disposition of property furnished or intended for the national guard, § 58-1-630.
Loss, damage, destruction or wrongful disposition of military property by state military forces personnel is a felony punishable as theft, § 58-1-623.
Penalties under the military code, § 58-1-631.
Punishment for theft, § 39-14-105.
Responsibility for federal and state military property in hands of state military forces personnel, § 58-1-515.
Unauthorized sale or disposition of military property or equipment, § 58-1-634.

58-1-604. Discrimination against members of the national guard.

It is a Class E felony for any person, firm or corporation to refuse employment to any person for the sole reason that the person is a member of the Tennessee national guard or to terminate the employment of any such

person for such reason or because of absence from place of employment while attending any prescribed drill, including annual field training.

History.
Acts 1970, ch. 596, § 99; T.C.A., § 7-304; Acts 1989, ch. 591, § 67.

Cross-References.
Penalty for Class E felony, § 40-35-111.
Penalty for violation of chapter, § 58-1-631.

58-1-605. Commissioned officers' power to take oaths and acknowledgments.

In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise provided by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed in connection with any pleading or other instrument to be filed or used in any court in this state, before or by any commissioned officer in active service of the armed forces of the United States, with the rank of second lieutenant or higher, in the army or marine corps, or with the rank of ensign or higher, in the navy or coast guard, or with the equivalent rank in any other component part of the armed forces of the United States, by any person who is a member of the armed forces of the United States or the spouse of such member of the armed forces accompanying a spouse in such service.

History.
Code 1858, § 2070 (deriv. Acts 1847-1848, ch. 82, § 1); Shan., § 3747; Code 1932, § 7662; Acts 1945, ch. 5, § 2; 1945, ch. 65, § 1; C. Supp. 1950, §§ 1012.30, 7662 (Williams, §§ 1012.33, 7662); modified; T.C.A. (orig. ed.), § 7-305.

Cross-References.
National guard officers authorized to administer oaths for purposes of military administration, § 58-1-234.

58-1-606. Validity of notarial acts of officers.

Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts as aforementioned, heretofore or hereafter made or taken, are declared legal, valid and binding, and instruments and documents so acknowledged, authenticated, or sworn to, shall be admissible in evidence and eligible to record in this state under the same circumstances, and with the same force and effect, as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act as aforementioned, had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

History.
Acts 1945, ch. 5, § 3; C. Supp. 1950, § 1012.30 (Williams, § 1012.33); T.C.A. (orig. ed.), § 7-306.

58-1-607. Officer's certificate of notarial act.

(a) In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or document, which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as such person's act, or made or signed the instrument or

document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

(b) If the signature, rank and branch of service or subdivision thereof of any such commissioned officer appear upon such instrument or document, or certificate, no further proof of the authority of such officer so to act shall be required, and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of §§ 58-1-605 — 58-1-607.

History.
Acts 1945, ch. 5, § 4; C. Supp. 1950, § 1012.30 (Williams, § 1012.33); T.C.A. (orig. ed.), § 7-307.

58-1-608 — 58-1-610. [Reserved.]

58-1-611. Fraudulent enlistment, appointment or separation.

Any person who:

(1) Enlists or procures appointment in the national guard by means of knowingly false representations or deliberate concealment as to the person's qualifications for such enlistment or appointment and receives pay or allowances thereunder; or

(2) Separates from the national guard by means of knowingly false representations or deliberate concealment as to the person's eligibility for such separation;

is guilty of a Class C misdemeanor.

History.
Acts 1970, ch. 596, § 55; T.C.A., § 7-311; Acts 1989, ch. 591, § 113.

Cross-References.
False oath to statement in enlistment contract, § 58-1-222.
Penalty for Class C misdemeanor, § 40-35-111.

58-1-612. Assistance with unlawful enlistment, appointment or separation.

Any person who effects an enlistment or appointment in or a separation from the national guard of any person who is known to such person to be ineligible for such enlistment, appointment, or separation because it is prohibited by law, regulation, or order is guilty of a Class C misdemeanor.

History.
Acts 1970, ch. 596, § 56; T.C.A., § 7-312; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

58-1-613. Absence without leave.

Any person of the Tennessee national guard who, without proper authority:

(1) Fails to go to the appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents self or remains absent from the unit, organization, or other place of duty at which the guard member is required to be at the time prescribed;

is guilty of a Class B misdemeanor.

History.
Acts 1970, ch. 596, § 57; T.C.A., § 7-313; Acts 1989, ch. 591, § 113; 2008, ch. 716, § 1.

Cross-References.
Absence without leave while on active state duty is a felony, § 58-1-621.
Penalty for Class B misdemeanor, § 40-35-111.
Sentinel, misbehavior as, § 58-1-627.

58-1-614. Missing movement.

Any member of the national guard, who through neglect or design, misses the movement of a ship, aircraft, units or other conveyances which movement is required as part of that member's duty is guilty of a Class C misdemeanor.

History.
Acts 1970, ch. 596, § 58; T.C.A., § 7-314; Acts 1989, ch. 591, § 113.

Cross-References.
Missing a movement while on active state duty is a felony, § 58-1-621.
Penalty for Class C misdemeanor, § 40-35-11.

58-1-615. Disrespect toward superior commissioned officer.

Any member of the national guard who behaves with disrespect toward the guard member's superior commissioned officer is guilty of a Class C misdemeanor.

History.
Acts 1970, ch. 596, § 59; T.C.A., § 7-315; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

58-1-616. Assaulting or willfully disobeying superior commissioned officer.

Any member of the national guard who:

(1) Strikes the guard member's superior commissioned officer or draws or lifts up any weapon or offers any violence against that officer while in the execution of the officer's duty; or

(2) Willfully disobeys a lawful command of the guard member's superior commissioned officer;

is guilty of a Class C misdemeanor.

History.
Acts 1970, ch. 596, § 60; T.C.A., § 7-316; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

58-1-617. Insubordinate conduct toward warrant officer or noncommissioned officer.

Any enlisted member of the national guard who:

(1) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of the officer's duty;

(2) Willfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(3) Treats with contempt, or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of office;

is guilty of a Class C misdemeanor.

History.
Acts 1970, ch. 596, § 61; T.C.A., § 7-317; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

58-1-618. Failure to obey order or regulation.

Any member of the national guard who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the Tennessee national guard, which it is the guard member's duty to obey, fails to obey the order; or

(3) Is derelict in the performance of duties;

is guilty of a Class B misdemeanor.

History.
Acts 1970, ch. 596, § 62; T.C.A., § 7-318; Acts 1989, ch. 591, § 112.

Cross-References.
Penalty for Class B misdemeanor, § 40-35-111.

58-1-619. Cruelty and maltreatment.

Any member of the national guard who is guilty of cruelty or oppression toward or maltreatment of, any person subject to the guard member's orders, is guilty of a Class B misdemeanor.

History.
Acts 1970, ch. 596, § 63; T.C.A., § 7-319; Acts 1989, ch. 591, § 112.

Cross-References.
Penalty for Class B misdemeanor, § 40-35-111.

58-1-620. Mutiny or sedition.

(a) Any member of the national guard who:

(1) With intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise to do such guard member's duty or creates any violence or disturbance is guilty of mutiny;

(2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence or other disturbances against that authority is guilty of sedition;

(3) Fails to do the utmost to prevent and suppress a mutiny or sedition being committed in the guard member's presence, or fails to take all reasonable means to inform the superior commissioned officer or the commanding officer of a mutiny or sedition which the guard member knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) Any member of the national guard who is found guilty of attempted mutiny, sedition, or failure to suppress or report a mutiny or sedition is guilty of a Class C felony.

History.
Acts 1970, ch. 596, § 64, T.C.A., § 7-320; Acts 1989, ch. 591, § 68.

Cross-References.
Penalty for Class C felony, § 40-35-111.

58-1-621. Misbehavior on active duty.

Any member of the national guard who, while on active state duty:

(1) Runs away;

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is the guard member's duty to defend;

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place or military property;

(4) Casts away arms or ammunition;

(5) Is guilty of cowardly conduct;

(6) Quits the guard member's place of duty to plunder or pillage; or

(7) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the national guard;

is guilty of a Class E felony.

History.
Acts 1970, ch. 596, § 65, T.C.A., § 7-321; Acts 1989, ch. 591, § 69.

Cross-References.
Absence without leave, § 58-1-613.
Malingering, § 58-1-628.
Penalty for Class E felony, § 40-35-111.
Sentinel, misbehavior as, § 58-1-627.

58-1-622. False official statements.

Any person subject to §§ 58-1-611 — 58-1-634 as provided in § 58-1-632 who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, or makes any other false official statement knowing the same to be false, is guilty of a Class C misdemeanor.

History.
Acts 1970, ch. 596, § 66; T.C.A., § 7-322; Acts 1989, ch. 591, § 113.

Cross-References.
False oath to statement in enlistment contract, § 58-1-222.
Penalty for Class C misdemeanor, § 40-35-111.

58-1-623. Military property — Loss, damage, destruction or wrongful disposition.

Any person subject to §§ 58-1-611 — 58-1-634 as provided in § 58-1-632 who, without proper authority:

(1) Sells or otherwise disposes of;

(2) Willfully or through gross neglect damages, destroys, or loses; or

(3) Willfully or through gross neglect suffers to be lost, damaged, destroyed, sold or wrongfully disposed of, any military property of the United

States or of the state;
is guilty of a felony and punishable as in the case of theft.

History.
Acts 1970, ch. 596, § 67; T.C.A., § 7-323; Acts 1989, ch. 591, § 70.

Cross-References.
Fraudulent disposition of property furnished or intended for national guard, § 58-1-630.
Penalties under the military code, § 58-1-631.
Punishment for theft, § 39-14-105.
Responsibility for federal and state military property in hands of state military forces personnel, §§ 58-1-514, 58-1-515.
Unauthorized sale or disposition of military property or equipment, § 58-1-634.
Unlawfully dealing in military property punishable as theft, § 58-1-603.

58-1-624. Property other than military property — Waste, spoilage, or destruction.

Any person subject to §§ 58-1-611 — 58-1-634 as provided in § 58-1-632 who, while on active state duty or in a duty status other than active state duty, willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of the state, is guilty of a Class E felony.

History.
Acts 1970, ch. 596, § 68; T.C.A., § 7-324; Acts 1989, ch. 591, § 71.

Cross-References.
Penalty for Class E felony, § 40-35-111.

58-1-625. Drunken or reckless driving.

Any member of the national guard who operates any vehicle while drunk, or in a reckless or wanton manner is guilty of a misdemeanor.

History.
Acts 1970, ch. 596, § 69; T.C.A., § 7-325.

Compiler's Notes.
The misdemeanor penalty provision in this section may have been affected by the Criminal Sentencing Reform Act of 1989. See §§ 39-11-114, 40-35-110, 40-35-111.

Cross-References.
Penalty for misdemeanor, §§ 39-11-114, 40-35-111.

58-1-626. Drunk on duty.

Any member of the national guard who is found drunk on duty is guilty of a Class C misdemeanor.

History.
Acts 1970, ch. 596, § 70; T.C.A., § 7-326; Acts 1989, ch. 591, § 113.

Cross-References.
Misbehavior of sentinel, § 58-1-627.
Penalty for Class C misdemeanor, § 40-35-111.

58-1-627. Misbehavior of a sentinel.

Any sentinel or lookout who is found drunk or sleeping upon the sentinel's or lookout's post, or who leaves it before regularly relieved, is guilty, if the offense is committed while the national guard is in active state service in the time of emergency, of a Class E felony; otherwise of a Class C misdemeanor.

History.
Acts 1970, ch. 596, § 71; T.C.A., § 7-327; Acts 1989, ch. 591, §§ 72, 113.

Cross-References.
Absence without leave, § 58-1-613.
Misbehavior on active duty, § 58-1-621.
Penalty for Class C misdemeanor, § 40-35-111.
Penalty for Class E felony, § 40-35-111.

58-1-628. Malingering.

Any member of the national guard who for the purpose of avoiding work, duty or service:

(1) Feigns illness, physical disablement, mental lapse or derangement; or

(2) Intentionally inflicts self-injury;

is guilty of a Class E felony.

History.
Acts 1970, ch. 596, § 72; T.C.A., § 7-328; Acts 1989, ch. 591, § 73.

Cross-References.
Penalty for Class E felony, § 40-35-111.

58-1-629. Riot or breach of the peace.

Any member of the national guard who causes or participates in any riot or breach of the peace is guilty of a Class B misdemeanor.

History.
Acts 1970, ch. 596, § 73; T.C.A., § 7-329; Acts 1989, ch. 591, § 112.

Cross-References.
Penalty for Class B misdemeanor, § 40-35-111.

58-1-630. Frauds against the government.

Any member of the national guard who:

(1) Knowing it to be false or fraudulent:

(A) Makes any claim against the state or any officer thereof; or

(B) Presents to any person in the civil or military service thereof, for approval or payment, any claim against the state or any officer thereof;

(2) For the purpose of obtaining the approval, allowance, or payment of any claim against the state or any officer thereof:

(A) Makes or uses any writing or other paper knowing the same to contain any false or fraudulent statement;

(B) Makes any oath to any fact or to any writing or other paper knowing such oath to be false; or

(C) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing the same to be forged or counterfeited;

(3) Having charge, possession, custody or control of any money or other property of the state, furnished or intended for the national guard or any force thereof, knowingly delivers to any person having authority to receive the same, any amount thereof less than that for which the person receives a certificate of receipt; or

(4) Being authorized to make or deliver any paper certifying the receipt of any property of the state, furnished or intended for the national guard or any force thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with

intent to defraud the state;
is guilty of a Class E felony.

History.
Acts 1970, ch. 596, § 74; T.C.A., § 7-330; Acts 1989, ch. 591, § 74.

Cross-References.
Loss, damage, destruction or wrongful disposition of military property by national guard personnel, § 58-1-623.

Penalty for Class E felony, § 40-35-111.

Responsibility for military property and funds, § 58-1-515.

Unauthorized sale or disposition of military property or equipment, § 58-1-634.

Unlawful dealing in military property is punishable as theft, § 58-1-603.

58-1-631. Penalties.

All violations of parts 1, 2 and 4-6 of this chapter including, but not limited to, §§ 58-1-611 — 58-1-633, are punishable under § 40-35-111.

History.
Acts 1970, ch. 596, § 75; T.C.A., § 7-331.

58-1-632. Application and effect of §§ 58-1-611 — 58-1-633.

Sections 58-1-611 — 58-1-633 are applicable to members of the national guard while they are in a drill or duty status. The enumeration of crimes and offenses herein is declared to be cumulative to other criminal and penal statutes of the state, it being the intent of the general assembly that §§ 58-1-611 — 58-1-633 are designed solely to create certain specified offenses peculiar to the military and necessary to the discipline, training, proper functioning and the orderly government of the national guard.

History.
Acts 1970, ch. 596, § 76; T.C.A., § 7-332.

58-1-633. Enlisted personnel — Explanation of penal laws.

Sections 58-1-611 — 58-1-633 shall be carefully explained to each enlisted member at the time of enlistment and annually thereafter.

History.
Acts 1970, ch. 596, § 77; T.C.A., § 7-333.

58-1-634. Unauthorized sale or disposition of military property or equipment — Penalty.

(a) Any person who shall sell, or offer for sale, barter or exchange, pledge, lend or give away, secrete, or retain after demand made by the civil or military officers of the state of Tennessee any clothing, arms, military outfits or accoutrements, or any other military property or equipment furnished by or through the state of Tennessee or the United States to any member of the military forces of the state of Tennessee, or who shall receive by purchase, barter, exchange, pledge, loan or gift, any such military property or equipment of the state of Tennessee or the United States, is guilty of a Class C misdemeanor.

(b) Any person in the military forces of the state of Tennessee, to whom shall have been entrusted any military property or equipment by reason of being in

such military service, shall account for the same to the proper military authority in accordance with the rules, regulations or special orders made by superior authorities in reference to the same, and such military property shall not be removed beyond the boundaries of the state of Tennessee unless required by the performance of the individual's military duties. Any person, whether in the military service or not, or whether enlistment or appointment shall have expired or not, who shall fail to account for or return to the proper military authorities any property which shall have come into such person's possession and to which the state of Tennessee or the United States may be entitled, or who shall conceal or convert the same to such person's own use, is guilty of a misdemeanor; provided further, that if such person leaves the state, after having failed to account for or return to the proper military authorities such property, such person is guilty of a felony and shall be punished as in the case of theft.

(c) Any prosecution had under this section may be abated, in the discretion of the district attorney general, if, prior to arraignment, full satisfaction is made for the property involved to the proper military authorities of the state or the United States and the payment of all court costs accruing by reason of the institution of any such prosecution has been made.

(d) This section is to be given general application and shall not be limited in its application by § 58-1-632, but is not to be construed in any way to amend or modify any prevailing laws regarding military property as heretofore and hereafter amended.

History.
Acts 1970, ch. 596, § 67; 1978, ch. 612, § 1; T.C.A., § 7-334; Acts 1989, ch. 591, §§ 75, 113.

Compiler's Notes.
The misdemeanor penalty provision in subsection (a) may have been affected by the Criminal Sentencing Act of 1989. See §§ 39-11-114, 40-35-110, 40-35-111.

Cross-References.
Care and custody of federal and state military property, §§ 58-1-514, 58-1-515.
Frauds against government, § 58-1-630.
Penalty for Class C misdemeanor, § 40-35-111.
Punishment for theft, § 39-14-105.
Unlawfully dealing in military property punishable as theft, § 58-1-603.
Wrongful disposition of military property punishable as theft, § 58-1-623.

PART 7

MILITARY FAMILY ASSISTANCE TRUST FUND

58-1-701. Creation of fund.

There is created within the general fund a special account to be known as the "military family assistance trust fund."

History.
Acts 2006, ch. 914, § 1.

58-1-702. Investment of moneys in fund.

Moneys in the fund shall be invested by the state treasurer for the benefit of the fund pursuant to § 9-4-603.

History.
Acts 2006, ch. 914, § 1.

58-1-703. Separate revolving fund — Interest and earnings — Reversion of fund balance at end of fiscal year.

(a) The military family assistance trust fund is created as a separate revolving fund. The trust fund shall consist of grants, contributions, appropriations, or other moneys made available for the purpose of the trust fund.

(b) All interest and earnings of the fund shall remain a part of the fund.

(c) No part of the fund shall revert to the general fund at the end of the fiscal year, but shall remain a part of the revolving fund available for expenditure in accordance with this part.

History.
Acts 2006, ch. 914, § 1.

58-1-704. Trust fund board.

(a) The military family assistance trust fund board is created for the purpose of administering the trust fund created pursuant to this part. The board shall be attached to the department of military affairs for administrative purposes. The board shall be composed of six (6) members as follows:

(1) Three (3) members, who are experts in military family matters, who shall be appointed by the governor;

(2) One (1) member, who is an expert in military family matters, who shall be appointed by the speaker of the senate;

(3) One (1) member, who is an expert in military family matters, who shall be appointed by the speaker of the house of representatives; and

(4) The adjutant general, who shall serve as a nonvoting member.

(b) The adjutant general, or a majority of the board members, shall arrange for the first board meeting as soon as practicable after all board members are appointed.

(c) Appointed board members shall serve without compensation, but may receive reimbursement for their actual and necessary travel expenses incurred in the performance of their duties. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(d) The term of each appointed member shall be four (4) years.

(e) An appointed member whose term has expired may continue to serve until a successor is appointed and qualifies. A member who is appointed to an unexpired term shall serve the rest of the term and until a successor is appointed and qualifies. A member may serve two (2) consecutive four-year terms and shall not be reappointed for four (4) years after the completion of those terms.

(f) A majority of the full membership of the board shall constitute a quorum.

(g) At its first meeting, the board shall elect, by majority vote, a chair, who shall preside at all meetings and coordinate the functions and activities of the board. The chair shall be elected or reelected each calendar year thereafter.

(h) The adjutant general shall not serve as the chair of the board.

(i) The board shall meet at least two (2) times annually, but may meet more frequently, as deemed necessary, subject to call by the chair or by request of a majority of the board members.

History.
Acts 2006, ch. 914, § 1.

58-1-705. Use of trust fund moneys.

(a) During active duty of a regular member of the United States armed forces deployed outside the United States who names Tennessee as home of record for military purposes, or any federal active duty member of a state national guard or a reserve component who names Tennessee as home of record for military purposes, and for ninety (90) days following the end of deployment outside the United States or deactivation, as appropriate, trust fund moneys shall be used to support:

(1) The person who names Tennessee home of record for military purposes;

(2) The person's Tennessee resident spouse; and

(3) The person's dependent or dependents.

(b) An application for a trust fund grant may be filed by the member who names Tennessee as home of record for military purposes, the member's Tennessee resident spouse, or the member's children's parent or guardian. The application shall be accompanied by an appropriate authorization to access personnel information contained in the military database defense enrollment reporting system for verification purposes.

(c) Subject to the availability of trust fund moneys, the adjutant general shall award a grant to an applicant, if that person's application is need-based, and the amount of the grant does not exceed the dollar cap established by the board through the promulgation of rules and regulations. An application shall be need-based, if:

(1) Funds are requested for necessary expenses incurred, or to be incurred. Necessary expenses shall include, but not be limited to:

(A) Housing;

(B) Utilities;

(C) Groceries;

(D) Health insurance copays; and

(E) Child care;

(2) The necessary expenses created, or will create, an undue hardship on a person referred to in subsection (a);

(3) The undue hardship is directly related to the member's deployment outside the United States or federal active duty, as appropriate;

(4) The applicant does not have reasonable access to any other funding source, whether public or private; and

(5) The military family assistance trust fund is the last resort for the applicant.

(d)(1) The adjutant general shall award or decline to award a grant within sixty (60) days of receiving an application.

(2) If the adjutant general awards or declines to award a grant, the adjutant general shall state in writing the reason for the decision and keep

the writing on file.

(3) If the adjutant general declines to award a grant, the adjutant general shall provide the applicant with a copy of the writing required by subdivision (d)(2). In addition, if the adjutant general declines to award a grant due to the lack of availability of public or private funds, the adjutant general shall identify sources of available funds for the applicant and provide assistance with regard to seeking funds from that source.

(4) If the adjutant general declines to award a grant, an applicant may file a written request to the military family assistance trust fund board asking that the entire board review the application.

History.
Acts 2006, ch. 914, § 1.

58-1-706. Report.

Each year between August 15 and September 1, the military family assistance trust fund board shall provide a written report to the governor, the speaker of the senate and the speaker of the house of representatives. The written report shall provide:

(1) The board's activities during the previous fiscal year;

(2) What moneys were spent out of the military family assistance trust fund and the purposes for which the moneys were spent;

(3) The amount of money left in the fund; and

(4) Any recommendations for future initiatives with regard to the trust fund and its administration.

History.
Acts 2006, ch. 914, § 1.

CHAPTER 2

DISASTERS, EMERGENCIES AND CIVIL DEFENSE

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PART 1

GENERAL EMERGENCY PROVISIONS

58-2-101. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Agency" means the Tennessee emergency management agency (TEMA);

(2) "Broadcaster" means a radio broadcasting station or a television broadcasting station primarily engaged in the business of facilitating or originating speech, pictures or both through over the air communications, both as to pure speech and commercial speech and for all purposes operating under licenses provided by the federal communications commission and which station has been selected by the federal emergency management agency as a primary entry point;

(3) "CLEO" means the chief local elected official;

(4) "Compacts" means the emergency management compacts included in parts 4 and 7 of this chapter;

(5) "Disaster" means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state emergency by a county, the governor, or the president of the United States. "Disaster" is identifiable by the severity of resulting damage, as follows:

(A) "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement;

(B) "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance; and

(C) "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance;

(6) "EMA" means a local emergency management agency of a political subdivision;

(7) "Emergency" means an occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, that results or may result in substantial injury or harm to the population, or substantial damage to or loss of property; provided, that natural threats may include disease outbreaks and epidemics;

(8) "Emergency management" means the preparation for, the mitigation of, the response to, and the recovery from emergencies and disasters. Specific emergency management responsibilities include, but are not limited to:

(A) Reduction of vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural, technological, or manmade emergencies or hostile military or paramilitary action;

(B) Preparation for prompt and efficient response and recovery to protect lives and property affected by emergencies;

(C) Response to emergencies using all systems, plans, and resources necessary to preserve adequately the health, safety, and welfare of persons or property affected by the emergency;

(D) Recovery from emergencies by providing for the rapid and orderly start of restoration and rehabilitation of persons and property affected by emergencies;

(E) Provision of an emergency management system embodying all aspects of pre-emergency preparedness and post emergency response, recovery, and mitigation; and

(F) Assistance in anticipation, recognition, appraisal, prevention, and

mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use;

(9) "Emergency management preparedness and assistance trust fund" means a trust fund to be administered solely by TEMA. All funds collected by the state and placed in this trust fund shall be designated for emergency management purposes only;

(10) "Emergency response broadcaster" means a person certified pursuant to § 58-2-128 as an emergency response broadcaster;

(11) "Emergency services coordinator" or "ESC" means the person or persons selected by the head of each executive branch agency or commissioner designated by the governor and includes alternates. The ESC and an alternate will be responsible for coordinating with the agency on emergency preparedness issues, preparing and maintaining emergency preparedness and post disaster response and recovery plans for their agency, maintaining rosters of personnel to assist in disaster operations, and coordinating appropriate training for agency personnel;

(12) "Energy emergency" means a condition of danger to the health, safety, welfare, or economic well being of the citizens of this state arising out of a present or threatened shortage of usable energy resources; also any condition of substantial danger to the health, safety, or welfare of the citizens of this state resulting from the operation of any electrical power generating facility, the transport of any energy resource by any means whatsoever, or the production, use or disposal of any source material, special nuclear material, or by-product material as defined by the Atomic Energy Act of 1954, 68 Stat. 919 (42 U.S.C. §§ 2011-2394); also any nuclear incident, as defined by the Atomic Energy Act of 1954, occurring in or outside this state, substantially affecting the health, safety, or welfare of the citizens of this state;

(13) "Energy resources" includes all forms of energy or power, including without limitation, oil, gasoline, and other petroleum products; natural or synthetic gas; electricity in all forms and from all sources; and other fuels of any description;

(14) "Entity" includes a firm, business, for profit and not-for-profit corporation, profit and not-for-profit unincorporated association, partnership, and two (2) or more persons having a joint or common economic interest;

(15) "GAR" means the governor's authorized representative;

(16) "Local emergency management agency" means an organization created in accordance with this chapter to discharge the emergency management responsibilities and functions of a political subdivision;

(17) "Manmade emergency" means an emergency caused by an action against persons or society, including, but not limited to, enemy attack, sabotage, terrorism, civil unrest, or other action impairing the orderly administration of government;

(18) "Mobile reserve unit" means an organization for emergency management created in accordance with this chapter by state or local authority to be dispatched by the governor to supplement local organizations for emergency management in a stricken area;

(19) "Natural emergency" means any emergency caused by a natural event, including, but not limited to, a storm, a flood, a drought, or an earthquake;

(20) "Person" includes a natural person or entity organized under the laws of this state or any other state or territory of the United States or the federal government, as the case may be, and includes both the singular and plural;

(21) "Political subdivision" means any municipality or county, including any county having metropolitan form of government, created pursuant to law;

(22) "Public official" means an elected or appointed person in the executive, legislative or judicial branch of the state or any political subdivision of the state;

(23) "SCO" means state coordinating officer;

(24) "Technological emergency" means an emergency caused by a technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident; and

(25) "TEMP" means Tennessee emergency management plan.

History.

Acts 2000, ch. 946, § 1; 2006, ch. 588, § 1; 2009, ch. 288, § 2; 2014, ch. 730, § 2.

Compiler's Notes.

For establishment of Tennessee emergency management agency as the agency of state government having responsibility and authority for planning disaster and emergency preparedness and directing response, see Executive Order Nos. 4 (February 13, 1987) and 15 (April 17, 1998).

Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

For the Preamble to the act concerning emergency preparedness, please refer to Acts 2014, ch. 730.

Acts 2014, ch. 730 § 1 provided that the act, which added the definitions of "broadcaster" and "emergency response broadcaster", shall be known and may be cited as the "Emergency Response Broadcasters Act."

Cross-References.

Civil defense functions include natural and nonhostile disasters, § 58-2-102.

Coordination with state military affairs, § 58-1-116.

Emergency communications districts, title 7, ch. 86.

Terrorism Prevention and Response Act of 2002, title 39, ch. 13, part 8.

Attorney General Opinions.

Use of blue flashing lights by county emergency management agency officers, OAG 99-062 (3/12/99).

Vehicles of an emergency management agency of a Tennessee city or county may be equipped with blue flashing lights, OAG 06-050 (3/16/06).

58-2-102. Legislative intent.

(a) The general assembly finds and declares that the state is vulnerable to a wide range of emergencies, including natural, technological, terrorist acts, and manmade disasters, all of which threaten the life, health, and safety of its people; damage and destroy property; disrupt services and everyday business and recreational activities; and impede economic growth and development.

The general assembly further finds that this vulnerability is exacerbated by the growth in the state's population, in the elderly population, in the number of seasonal vacationers, and in the number of persons with special needs. This growth has greatly complicated the state's ability to coordinate its emergency management resources and activities.

(b) It is the intent of the general assembly to reduce the vulnerability of the people and property of this state; to prepare for efficient evacuation or shelter-in-place of threatened or affected persons; to provide for the rapid and orderly provision of relief to persons and for the restoration of services and property; and to provide for the coordination of activities relating to emergency preparedness, response, recovery, and mitigation among and between agencies and officials of this state, with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with the private sector.

(c) It is further the intent of the general assembly to promote the state's emergency preparedness, response, recovery, and mitigation capabilities through enhanced coordination, long-term planning, and adequate funding. State policy for responding to disasters is to support local emergency response efforts. In the case of a major or catastrophic disaster, however, the needs of residents and communities will likely be greater than local resources. In these situations, the state must be capable of providing effective, coordinated, and timely support to communities and the public. Therefore, the general assembly hereby determines and declares that this chapter fulfills a compelling state interest.

History.

Acts 2000, ch. 946, § 1; 2002, ch. 849, § 7a.

Compiler's Notes.

Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

58-2-103. Policy and purpose.

(a) Because of the existing and continuing possibility of the occurrence of emergencies and disasters resulting from natural, technological, or manmade causes, including acts of terrorism and the recovery therefrom; in order to ensure that preparations of this state will be adequate to deal with, reduce vulnerability to, and recover from such emergencies and disasters; to provide for the common defense and to protect the public peace, health, and safety; and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary to:

(1) Create a state emergency management agency to be known as the "Tennessee emergency management agency" (TEMA), to authorize the creation of local organizations for emergency management in the political subdivisions of the state, and to authorize cooperation with the federal government and the governments of other states;

(2) Confer upon the governor, TEMA, and the governing body of each political subdivision of the state the emergency powers provided herein;

(3) Provide for the rendering of mutual aid among the political subdivisions of the state, with other states, and with the federal government with respect to carrying out all emergency management functions and responsibilities;

(4) Authorize the establishment of such organizations and the development and employment of such measures as are necessary and appropriate to carry out this chapter; and

(5) Provide the means to assist in the prevention or mitigation of emergencies which may be caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use, not to exclude flood plain management.

(b) It is further declared to be the purpose of this chapter and the policy of the state that all emergency management functions of the state be coordinated to the maximum extent with comparable functions of the federal government, including its various departments, agencies of other states and localities, and private agencies of every type, to the end that the most effective preparation and use may be made of the manpower, resources, and facilities of the nation for dealing with any emergency that may occur.

History.

Acts 2000, ch. 946, § 1.

Compiler's Notes.

For establishment of Tennessee emergency response council, see Executive Orders No. 7 (April 1, 1987).

For establishment of Tennessee emergency management agency as the agency of state government having responsibility and authority for planning disaster and emergency preparedness and directing response, see Executive Order Nos. 4 (February 13, 1987) and 15 (April 17, 1998).

The Tennessee emergency management agency, created by this section, terminates June 30, 2020. See §§ 4-29-112, 4-29-241.

Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

Cross-References.

Emergency management agency as part of military department, § 58-1-114.

58-2-104. Creation of agency — Director and deputies.

(a) The governor is hereby authorized and directed to create a state agency to be known as the "Tennessee emergency management agency" (TEMA) under the adjutant general for day-to-day administrative purposes and, upon the recommendation of the adjutant general, to appoint a director of TEMA, who shall be the administrator thereof. The director shall hold office at the pleasure of the governor, and shall receive such salary as is fixed by the adjutant general and approved by the governor. The agency shall authorize the creation of local organizations for emergency management in the political subdivisions of the state, and authorize cooperation with the federal government and the governments of other states.

(b) The governor is hereby authorized to appoint such deputy directors of

the agency as the governor may in the exercise of the governor's sound discretion deem necessary, and such directors, in the discretion of the governor and upon the recommendation of the adjutant general, may be state employees who shall serve in such capacity without additional compensation.

(c) The director, subject to the direction and control of the governor, acting through the adjutant general, shall be the executive head of the agency and shall be responsible to the governor for carrying out the program for TEMA for this state. The director shall coordinate the activities of all organizations for the agency within the state and shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government. For normal day-to-day administrative functions, the director shall report to the adjutant general. During emergency conditions, the agency and director shall report to the governor or the governor's designee. General coordination with the adjutant general shall be maintained. The department of the military shall become a resource for the state as with all other departments and agencies; further, the director shall make recommendations to the governor for the use of the national guard and other state resources as disaster conditions mandate, including, but not limited to, the assistance of local and private agencies. The director shall coordinate with the governor's office on the activation or the potential activation of any mutual aid agreement or compact.

(d) The adjutant general, upon the recommendation of the director, may employ such area directors, professional, technical, clerical, stenographic, and other personnel, and the adjutant general shall fix their compensation and may make expenditures from available funds appropriated for the military department or from funds made available to the adjutant general for purposes of emergency management, as may be necessary to carry out the purposes of this chapter. The director shall be provided with necessary, and appropriate office space, furniture, supplies, stationery, printing and equipment, including but not limited to, radio, radiological and any and all other proper equipment necessary to carry out the emergency management program for the state. The necessary mileage, office expenses, salaries of personnel, postage, telephone and expressage shall be chargeable to any funds available for emergency management.

History.
Acts 2000, ch. 946, § 1.

Compiler's Notes.
Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

58-2-105. Limitations.

Nothing in this chapter shall be construed to:

(1) Interfere with the course or conduct of a labor dispute, except that

actions otherwise authorized by this chapter or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) Interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including, but not limited to, radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with an emergency;

(3) Affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or any personnel thereof, when on active duty; state, local, and interjurisdictional emergency plans shall place reliance upon the forces available for performance of functions related to emergencies; and

(4) Limit, modify, or abridge the authority of the governor to proclaim martial rule or exercise any other powers vested in the governor under the constitution, statutes or common law of this state independent of or in conjunction with this chapter; provided, that the authority shall be limited to the extent provided under § 58-2-107(m) and as otherwise specifically provided by statute.

History.

Acts 2000, ch. 946, § 1; 2009, ch. 288, § 3.

Compiler's Notes.

Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

58-2-106. Emergency management responsibilities and powers.

(a) The agency is responsible for maintaining a comprehensive statewide program of emergency management. The agency is responsible for coordination with efforts of the federal government with other departments and agencies of state government, county governments, municipal governments and school boards, and private agencies that have a role in emergency management. The director of the agency shall be the state coordinating officer (SCO) and the governor's authorized representative (GAR).

(b) The agency is responsible for carrying out this chapter. In performing its duties under this chapter, the agency shall:

(1) Prepare a TEMP and maintain an accountable ESC program, which shall be integrated into and coordinated with the emergency management plans and programs of the federal government. The plan shall be implemented by a continuous, integrated comprehensive emergency management program. The plan must contain provisions to ensure that the state is prepared for emergencies and minor, major, and catastrophic disasters, and the agency shall work closely with local governments and agencies and organizations with emergency management responsibilities in preparing and maintaining the plan. The TEMP shall be planning, response, recovery

and mitigation oriented and shall include the following:

(A) An evacuation component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of evacuation activities;

(B) A shelter component that includes specific regional and interregional planning provisions and promotes coordination of shelter activities between the public, private, and nonprofit sectors;

(C) A postdisaster response and recovery component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of postdisaster response and recovery activities. This component must provide for postdisaster response and recovery strategies according to whether a disaster is minor, major, or catastrophic. The postdisaster response and recovery component must, at a minimum:

(i) Establish the structure of the state's postdisaster response and recovery organization;

(ii) Establish procedures for activating the state's plan;

(iii) Set forth policies used to guide postdisaster response and recovery activities;

(iv) Describe the chain of command during the postdisaster response and recovery period;

(v) Describe initial and continuous postdisaster response and recovery actions;

(vi) Identify the roles and responsibilities of each involved agency and organization;

(vii) Provide for a comprehensive communications plan, including, but not limited to, a computerized telephone emergency warning system;

(viii) Establish procedures for monitoring mutual aid agreements;

(ix) Provide for assessment teams;

(x) Ensure the availability of an effective statewide urban search and rescue program coordinated with the fire services;

(xi) Ensure the existence of a comprehensive statewide medical care plan; and

(xii) Establish systems for coordinating volunteers and accepting and distributing donated funds and goods;

(D) Additional provisions addressing aspects of preparedness, response, recovery, and mitigation as determined necessary by the agency;

(E) Address the need for coordinated and expeditious deployment of state resources, including the Tennessee national guard and requesting of federal assets;

(F) Establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations and can communicate emergency response decisions;

(G) Establish guidelines and schedules for exercises that evaluate the ability of the state and its political subdivisions to respond to minor, major, and catastrophic disasters and support local emergency management

agencies. Such exercises shall be coordinated with local governments and, to the extent possible, the federal government; and

(H) Assign lead and support responsibilities to state agencies and personnel for emergency support functions and other support activities;

(2) Adopt standards and requirements for county emergency management plans. The standards and requirements must ensure that county plans are coordinated and consistent with the TEMP. If a municipality elects to establish an emergency management program, it must adopt a city emergency management plan that complies with all standards and requirements applicable to county emergency management plans;

(3) Assist political subdivisions in preparing and maintaining emergency management plans;

(4) Periodically review political subdivision emergency management plans for consistency with the TEMP and standards and requirements adopted under this section;

(5) Cooperate with the president of the United States, the heads of the armed forces, the various federal emergency management agencies, and the officers and agencies of other states in matters pertaining to emergency management in the state and the nation and incidents thereof and, in connection therewith, take any measures that it deems proper to carry into effect any request of the president and the appropriate federal officers and agencies for any emergency management action, including the direction or control of:

(A) Emergency management drills, tests, or exercises of whatever nature; and

(B) Warnings and signals for tests and drills, attacks, or other imminent emergencies or threats thereof and the mechanical devices to be used in connection with such warnings and signals;

(6) Make recommendations to the general assembly for preparedness, prevention, and mitigation measures designed to eliminate emergencies or reduce their impact;

(7) In accordance with the TEMP and program for emergency management, ascertain the requirements of the state and its political subdivisions for equipment and supplies of all kinds in the event of an emergency; plan for and either procure supplies, medicines, materials, and equipment or enter into memoranda of agreement or open purchase orders that will ensure their availability; and use and employ from time to time any of the property, services, and resources within the state in accordance with this chapter;

(8) Anticipate trends and promote innovations that will enhance the emergency management system;

(9) Institute statewide public awareness programs. This includes an intensive public educational campaign on emergency preparedness issues;

(10) Prepare and distribute to appropriate state and local officials catalogs of federal, state, and private assistance programs;

(11) Coordinate federal, state, and local emergency management activities and take all other steps, including the partial or full mobilization of emergency management forces and organizations in advance of an actual emergency, to ensure the availability of adequately trained and equipped forces of emergency management personnel before, during, and after emer-

gencies and disasters;

(12) Implement training programs to improve the ability of state and local emergency management personnel to prepare and implement emergency management plans and programs. This includes a continuous training program for agencies and individuals that will be called on to perform key roles in state and local postdisaster response and recovery efforts and for local government personnel on federal and state postdisaster response and recovery strategies and procedures;

(13) Periodically review emergency operating procedures of state agencies and recommend revisions as needed to ensure consistency with the TEMP and program;

(14) Make such surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of this chapter;

(15) Prepare, in advance whenever possible, such executive orders, proclamations, and rules for issuance by the governor as are necessary or appropriate for coping with emergencies and disasters;

(16) Cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for mitigation, preparation, response, and recovery;

(17) Delegate, as necessary and appropriate, authority vested in it under this chapter and provide for the subdelegation of such authority;

(18) Create, implement, administer, promulgate, amend, and rescind rules, programs, and plans needed to carry out this chapter with due consideration for, and in cooperation with, the plans and programs of the federal government; and

(19) Do other things necessary, incidental, or appropriate for the implementation of this chapter.

History.

Acts 2000, ch. 946, § 1; 2002, ch. 849, § 7b.

Compiler's Notes.

Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

Cross-References.

Office of energy programs, §§ 4-3-510 — 4-3-515.

58-2-107. Emergency management powers of the governor.

(a)(1) The governor is responsible for addressing the dangers presented to this state and its people by emergencies. In the event of an emergency beyond local control, the governor, or, in the governor's absence, the governor's successor as provided by law, may assume direct operational control over all or any part of the emergency management functions within this state, and such person has the power through proper process of law to carry out this chapter. The governor is authorized to delegate such powers as the governor may deem prudent.

(2) Pursuant to the authority vested in the governor under subdivision (a)(1), the governor may issue executive orders, proclamations, and rules and may amend or rescind them. Such executive orders, proclamations, and rules have the force and effect of law.

(b)(1) The governor or the governor's designee, shall declare a state of emergency or a disaster declaration in one (1) of two (2) ways:

(A) By executive order or proclamation; or

(B) By the activation of the TEMP.

(2) These two (2) types of threats may be declared by the governor if the governor finds an emergency has occurred or the occurrence of threat thereof is imminent. The state of emergency shall continue until the governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and the governor terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than sixty (60) days unless renewed by the governor. All executive orders or proclamations issued under this section shall indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make possible its termination. An executive order or proclamation shall be promptly disseminated by means calculated to bring its contents to the attention of the general public; and, unless the circumstances attendant upon the emergency prevent or impede such filing, the order or proclamation shall be filed promptly with the department of state and in the office of the chief executive officer in each county to which the order or proclamation applies.

(c) An executive order or proclamation of a state of emergency shall:

(1) Activate the emergency mitigation, response, and recovery aspects of the state, local, and interjurisdictional emergency management plans applicable to the political subdivision or area in question;

(2) Be authority for the deployment and use of any forces to which the plan or plans apply and for the use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other law relating to emergencies; and

(3) Identify whether the state of emergency is due to a minor, major, or catastrophic disaster.

(d) During the continuance of a state emergency, the governor is commander in chief of the Tennessee national guard and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or rules, but nothing in this section restricts the governor's authority to do so by orders issued at the time of the emergency.

(e) In addition to any other powers conferred upon the governor by law, the governor may:

(1) Suspend any law, order, rule or regulation prescribing the procedures for conduct of state business or the orders or rules or regulations of any state agency, if strict compliance with any such law, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(2) Utilize all available resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the emergency;

(3) Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

(4) Subject to any applicable requirements for compensation, commandeer or utilize any private property, which term shall not be construed to include firearms, ammunition, or firearm or ammunition components, if the governor finds this necessary to cope with the emergency;

(5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other emergency mitigation, response, or recovery;

(6) Prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) Control ingress and egress to and from an emergency area, the movement of persons within the area, and the occupancy of premises therein;

(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, or combustibles, which terms shall not be construed to include firearms, ammunition, or firearm or ammunition components;

(9) Make provision for the availability and use of temporary emergency housing;

(10) Take effective measures for limiting or suspending lighting devices and appliances, gas and water mains, electric power distribution, and all other utility services in the general public interest;

(11) Take measures concerning the conduct of civilians, the movement and cessation of movement of pedestrian and vehicular traffic prior to, during, and subsequent to drills and actual or threatened emergencies, the calling of public meetings and gatherings, and the evacuation and reception of civilian population, as provided in the TEMP and political subdivisions thereof; and

(12) Authorize the use of forces already mobilized as the result of an executive order, rule, or proclamation to assist the private citizens of the state in clean up and recovery operations during emergencies when proper permission to enter onto or into private property has been obtained from the property owner.

(f) The governor shall take such action and give such direction to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with this chapter and with the orders and rules made pursuant thereto.

(g) The governor shall employ such measures and give such directions to the department of health and department of human services, division of vocational rehabilitation, as may be reasonable and necessary for the purpose of securing compliance with this chapter or with the findings or recommendations of such agency by reason of conditions arising from emergencies or threats of emergency.

(h) The governor shall delegate emergency responsibilities to the officers and agencies of the state and of the political subdivisions thereof prior to an emergency or threat of an emergency, and shall utilize the services and facilities of existing officers and agencies of the state and of the political subdivisions thereof, including their personnel and other resources, as the primary emergency management forces of the state, and all such officers and agencies shall cooperate with and extend their services and facilities to the agency, as it may require.

(i) The governor and the agency shall establish agencies and offices and appoint executive, professional, technical, clerical and other personnel as may be necessary to carry out this chapter.

(j) The governor shall formulate and execute plans and rules for the control of traffic in order to provide for the rapid and safe movement or evacuation over public highways and streets of people, troops, or vehicles and materials for national defense or for use in any defense industry, and may coordinate the activities of the departments or agencies of the state and the political subdivisions thereof concerned directly or indirectly with public highways and streets in a manner which will effectuate such plans.

(k) The governor may delegate to the director of TEMA the authority to declare a state of emergency in order that certain commercial vehicles engaged in the distribution of electric power, the supply of fuel, or telecommunications services to residences and businesses may be considered to be participating in an emergency relief effort for the purpose of the federal hours-of-service regulations promulgated by the federal motor carrier safety administration. Pursuant to the delegation of authority granted by this subsection (k), the director of TEMA may declare a state of emergency prospectively in anticipation of an emergency.

(*l*)(1) If the governor of Tennessee declares an emergency in response to a catastrophic or major disaster, voluntary health care providers, including hospitals and community mental health care centers, participating in the Emergency Management Assistance Compact or Southern Regional Emergency Management Assistance Compact are immune from liability in providing the health care to victims or evacuees of the catastrophic or major disaster, as long as the services are provided within the limits of the provider's license, certification or authorization, unless an act or omission was the result of gross negligence or willful misconduct.

(2) If additional medical resources are required, the governor, by executive order, may provide limited liability protection to health care providers, including hospitals and community mental health care centers and those licensed, certified or authorized under titles 33, 63 or 68, and who render services within the limits of their license, certification or authorization to victims or evacuees of such emergencies; provided, however, that this protection may not include any act or omission caused by gross negligence or willful misconduct.

(3) The duration of the protection provided by this subsection (*l*) shall not exceed thirty (30) days, but may be extended by the governor by executive order for an additional thirty (30) days, if required to ensure the provision of emergency medical services in response to the catastrophic or major disaster.

(m) During any state of emergency, major disaster or natural disaster, the state, a political subdivision or a public official shall not prohibit nor impose additional restrictions on the lawful possession, transfer, sale, transport, carrying, storage, display or use of firearms and ammunition or firearm and ammunition components.

History.

Acts 2000, ch. 946, § 1; 2004, ch. 487, § 1; 2006, ch. 560, § 1; 2007, ch. 129, § 1; 2010, ch. 885, § 1.

Compiler's Notes.

Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

Attorney General Opinions.

Authority to compel emergency evacuations, OAG 06-172 (11/22/06).

Ability of out-of-state health care professionals to provide emergency assistance in Tennessee, OAG 07-107 (7/13/07).

58-2-108. Designation of emergency services coordinators.

(a) At the direction of the governor, the head of each executive department and independent agency shall select from within such department or agency a person to be designated as the emergency services coordinator (ESC) for the department or agency together with an alternate ESC.

(b) The ESC is responsible for coordinating with TEMA and reporting to that agency on emergency preparedness issues, preparing and maintaining emergency preparedness and postdisaster response and recovery plans for their agency, maintaining rosters of personnel to assist in disaster operations, and coordinating appropriate training for agency personnel.

(c) These individuals shall be responsible for ensuring that each state facility, such as a prison, office building, or university, has a disaster preparedness plan that is reviewed by the applicable local emergency management agency and approved by TEMA.

(d) The head of each department or agency shall notify TEMA, in writing, of the person initially designated as the ESC for such agency and the ESC's alternate, and of any changes in persons so designated thereafter.

(e) Upon the designation of the ESC, the department or agency shall provide the necessary equipment to the ESC as prescribed by TEMA for the performance of the duties of the ESC.

(f) TEMA shall, in consultation with the department of human resources, develop a mechanism to provide for a salary supplement for the appointed ESC, subject to available funding.

(g) TEMA shall notify the governor of compliance with this section.

History.

Acts 2000, ch. 946, § 1.

Compiler's Notes.

Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig.

ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

Cross-References.

Interstate civil defense and disaster compact, title 58, ch. 2, part 4.

Monitoring of radio-active truck traffic, § 68-202-104.

Natural and nonhostile disasters included in civil defense functions, § 58-2-102.

Office of energy programs, §§ 4-3-510 — 4-3-515.

58-2-109. Financing — Acceptance of gifts.

(a) It is the intent of the general assembly and declared to be the policy of this state that funds to prepare for and meet emergencies shall always be available.

(b) It is the intent of the general assembly that the first recourse shall be to annually fund a state emergency management agency. If the governor finds that the demands placed upon these funds in coping with a particular disaster are unreasonably great, the governor may, as otherwise provided by law, make funds available by transferring and expending moneys appropriated for other purposes or out of any unappropriated surplus funds.

(c) Nothing contained in this section shall be construed to limit the authority of the governor to apply for, administer, and expend any grants, gifts, or payments in aid of emergency prevention, mitigation, preparedness, response, or recovery.

(d) Whenever any person, firm, or corporation offers to the state or to any political subdivision thereof services, equipment, supplies, materials, or funds by way of gift, grant, loan or other agreement for the purpose of emergency management, the state, acting through the agency, or such political subdivision, acting through its governing body or a local emergency management agency, may accept such offer. Upon such acceptance, the agency or the presiding officer of the governing body of the political subdivision may authorize receipt of the gift, grant, or loan on behalf of the state or such political subdivision, subject to the terms of the offer.

History.

Acts 2000, ch. 946, § 1.

Compiler's Notes.

Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

Cross-References.

Acceptance of gifts, § 12-1-101.

58-2-110. Emergency management powers of political subdivisions.

Safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state.

(1) **Counties.**

(A) In order to provide effective and orderly governmental control and coordination of emergency operations in emergencies within the scope of this chapter, each county within this state shall be within the jurisdiction of and served by TEMA. Except as otherwise provided in this chapter, each local emergency management agency shall have jurisdiction over and serve an entire county. Unless part of an interjurisdictional emergency management agreement entered into pursuant to subdivision (3)(b) which is recognized by the governor by executive order or rule, each county must establish and maintain such an emergency management agency and shall develop a county emergency management plan and program that is coordinated and consistent with the TEMP and program.

(B) Each county emergency management agency created and established pursuant to this chapter shall have a director who shall be appointed by the CLEO and, if required, approved by the governing body of the county. The director must meet the minimum training and education qualifications established in a job description developed by the CLEO and that meets the requirements of § 58-2-127. The job description for a directorship must be approved by the governing body of the county. The director's annual salary shall be fixed by the governing body of the county. Each CLEO shall promptly inform TEMA of the appointment of the director and other personnel. Each director has direct responsibility for the organization, administration, and operation of the county emergency management agency, subject only to the direction and control of the CLEO and shall serve as liaison to TEMA and other local emergency management agencies and organizations.

(C) Each county emergency management agency shall perform emergency management functions within the territorial limits of the county within which it is organized and, in addition, shall conduct such activities outside its territorial limits of the county within which it is organized as are required pursuant to this chapter and in accordance with state and county emergency management plans and mutual aid agreements. A county shall serve as liaison for and coordinate the requests of municipalities located within such county for state and federal assistance during postdisaster emergency operations.

(2) **Municipalities.** Legally constituted municipalities are authorized and encouraged to create municipal emergency management programs. Municipal emergency management programs shall coordinate their activities with those of the county emergency management agency. Municipalities without emergency management programs shall be served by their respective county agencies. If a municipality elects to establish an emergency management program, it must comply with all laws, rules, and regulations applicable to county emergency management agencies. Each municipal emergency management plan must be consistent with and subject to the applicable county emergency management plan. In addition, each municipality must coordinate requests for state or federal emergency response assistance with its county. This requirement does not apply to requests for reimbursement under federal public disaster assistance programs.

(3) **Emergency management powers; political subdivisions.**

(A) In carrying out this chapter, each political subdivision has the power and authority to:

(i) Appropriate and expend funds; make contracts; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency; and direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies;

(ii) Appoint, employ, remove, or provide, with or without compensation, coordinators, rescue teams, fire and police personnel, and other emergency management workers;

(iii) Establish, as necessary, a primary and one (1) or more secondary emergency operating centers to provide continuity of government and direction and control of emergency operations;

(iv) Assign and make available for duty the offices and agencies of the political subdivision, including the employees, property, or equipment thereof relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency operation purposes, as the primary emergency management forces of the political subdivision for employment within or outside the political limits of the subdivision;

(v) Request state assistance or invoke emergency-related mutual-aid assistance by declaring a state of local emergency in the event of an emergency affecting only one (1) political subdivision. The duration of each state of emergency declared locally is limited to seven (7) days; it may be extended, as necessary, in seven-day increments. Further, the political subdivision has the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:

(a) Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;

(b) Entering into contracts;

(c) Incurring obligations;

(d) Employment of permanent and temporary workers;

(e) Utilization of volunteer workers;

(f) Rental of equipment;

(g) Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and

(h) Appropriation and expenditure of public funds; and

(vi) Declare a local state of emergency in order that certain commercial vehicles engaged in the distribution of electric power, the supply of fuel, or telecommunications services to residences and businesses may be considered to be participating in an emergency relief effort for the purpose of the federal hours-of-service regulations promulgated by the federal motor carrier safety administration. The CLEO may declare a local state of emergency prospectively in anticipation of an emergency.

(B) Upon the request of two (2) or more adjoining counties, or if the governor finds that two (2) or more adjoining counties would be better served by an interjurisdictional arrangement than by maintaining separate emergency management agencies and service, the governor may delineate by executive order or rule an interjurisdictional area adequate to plan for, prevent, mitigate, or respond to emergencies in such area and may direct steps to be taken as necessary, including the creation of an interjurisdictional relationship, a joint emergency plan, a provision for mutual aid, or an area organization for emergency planning and services. A finding of the governor pursuant to this subdivision (3)(B) shall be based on one (1) or more factors related to the difficulty of maintaining an efficient and effective emergency prevention, mitigation, preparedness, response, and recovery system on a nonjurisdictional basis, such as:

(i) Small or sparse population;

(ii) Limitations on public financial resources severe enough to make maintenance of a separate emergency management agency and services unreasonably burdensome;

(iii) Unusual vulnerability to emergencies as evidenced by a past history of emergencies, topographical features, drainage characteristics, emergency potential, and presence of emergency-prone facilities or operations;

(iv) The interrelated character of the counties in a multicounty area; and

(v) Other relevant conditions or circumstances.

(4) **Local emergency planning committees.**

(A) Each local emergency planning committee (LEPC) is authorized to assess and collect an annual fee of one hundred dollars ($100) from member facilities and industries within its emergency planning district required to submit tier II reports in accordance with federal law, 42 U.S.C. § 11001 et seq. Such fee shall be assessed and collected in the manner authorized by each such LEPC.

(B) The revenue derived from such fee shall be used solely by the LEPC for conducting annual event exercises, educating the public, and printing the Hazardous Materials Emergency Response Plan.

(C) This subdivision (4) applies to LEPCs in any county having a population of not less than seventy-one thousand, three hundred (71,300) nor more than seventy-one thousand, four hundred (71,400), according to the 2000 federal census or any subsequent federal census, upon the adoption of a resolution by a two-thirds (⅔) vote of the county legislative body of such county.

History.

Acts 2000, ch. 946, § 1; 2003, ch. 185, § 1; 2004, ch. 487, § 2; 2009, ch. 110, § 1; 2011, ch. 365, § 1.

Compiler's Notes.

Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning

general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Attorney General Opinions.

The director and deputy director of a local emergency management agency created under T.C.A. § 58-2-110 may not display flashing blue lights on their vehicles, OAG 07-074 (5/17/07).

58-2-111, 58-2-112. [Reserved.]

58-2-113. Emergency management support forces or mobile reserve unit.

(a) TEMA is authorized to provide, within or out of the state, such support from available personnel, equipment, and other resources of state agencies and the political subdivisions of the state as may be necessary to reinforce emergency management agencies in areas stricken by emergency. Such support shall be rendered with due consideration of the plans of the federal government, this state, the other states, and of the criticalness of the existing situation. Emergency management support forces shall be called to duty upon order of TEMA and shall perform functions in any part of the state or, upon the conditions specified in this section, in other states.

(b) Personnel of emergency management support forces while on duty, whether inside or outside of this state, shall:

(1) If they are employees of the state, have the powers, duties, rights, privileges, and immunities, and receive the compensation incidental to their employment;

(2) If they are employees of a political subdivision of the state, whether serving inside or outside of the political subdivision, have the powers, duties, rights, privileges, and immunities, and receive the compensation, incidental to their employment. The compensation shall be provided by and through the providing political subdivision; and

(3) If they are not employees of the state or a political subdivision thereof, they shall be entitled to the same rights and immunities as are provided by law for the employees of this state and to such compensation as may be fixed by TEMA. All personnel of emergency management support forces shall, while on duty, be subject to the operational control of the authority in charge of emergency management activities in the area in which they are serving and shall be reimbursed for all actual and necessary travel and subsistence expenses to the extent of funds available.

History.

Acts 2000, ch. 946, § 1.

Compiler's Notes.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

Attorney General Opinions.

The Tennessee Emergency Management Agency is authorized but not required to com-

pensate disaster recovery volunteers for their services, OAG 04-174 (12/17/04).

The Tennessee Emergency Management Agency is required to register the names of disaster recovery volunteers with the Board of Claims, OAG 04-174 (12/17/04).

Disaster recovery volunteers and the State of Tennessee are immune for the negligent operation of a state vehicle by a volunteer en route to a requesting state under the Compact if traveling to a disaster is considered rendering aid in another state pursuant to T.C.A. § 58-2-403; requesting states are required to provide representation to disaster recovery volunteers to the same extent they provide representation to their own agents, OAG 04-174 (12/17/04).

If not immune pursuant to T.C.A. § 58-2-403, volunteers are immune as provided in T.C.A. § 9-8-307(h) in Tennessee, and the State of Tennessee is liable for their negligence, OAG 04-174 (12/17/04).

Volunteers are entitled to the T.C.A. § 9-8-307 immunity and the State of Tennessee is entitled to sovereign immunity in other states if those states choose to recognize the immunity afforded the State of Tennessee and its volunteers by the State of Tennessee; regardless, if sued personally, volunteers can request legal representation at the expense of the State of Tennessee and reimbursement of any judgment, OAG 04-174 (12/17/04).

Disaster recovery volunteers sent to a Compact state by the Tennessee Emergency Management Agency are not entitled to Tennessee workers' compensation benefits in the event of death or injury, OAG 04-174 (12/17/04).

Legal protection of law enforcement officers who self-deploy in response to disasters, OAG 06-029 (2/8/06).

No remedy other than general tort law is likely available for unpaid volunteers for death or injury sustained while mobilized by TEMA. TEMA's discretionary authority to provide a disaster relief volunteer compensation is not sufficient to classify a disaster relief volunteer as a paid state employee or as a contract vendor of personal services for the State of Tennessee. OAG 12-87, 2012 Tenn. AG LEXIS 88 (9/17/12).

58-2-114. Government equipment, services, and facilities.

In carrying out this chapter, the governor, the director of TEMA and the executive officers, or governing bodies of the political subdivisions of the state establishing local emergency management agencies, are directed to utilize the services, equipment, supplies and facilities of existing departments, offices, and agencies of the state and of the political subdivisions thereof to the maximum extent practicable, and the officers and personnel of all such departments, offices and agencies are directed to cooperate with and extend such services and facilities to the governor or to the director and to the local emergency management agencies throughout the state upon request.

History.

Acts 2000, ch. 946, § 1.

Compiler's Notes.

Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

Cross-References.

General eminent domain law, title 29, ch. 16.

58-2-115. Compensation.

(a) Compensation for services or for the taking or use of property shall be owed only to the extent that a claimant may not be deemed to have volunteered the claimant's services or property without compensation and only to the extent that such taking exceeds the legal responsibility of a claimant to render such services or make such property so available.

(b) Compensation owed for personal services shall be only such as may be fixed by TEMA.

(c) Compensation for property shall be owed only if the property was commandeered or otherwise used in coping with an emergency and its use or destruction was ordered by the governor or a member of the emergency forces of this state.

(d) Any person claiming compensation for the use, damage, loss, or destruction of property under this chapter shall file a claim therefor with the agency in the form and manner that the agency provides.

(e) Unless the amount of compensation owed on account of property damaged, lost, or destroyed is agreed between the claimant and TEMA, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state.

(f) Nothing in this section applies to or authorizes compensation:

(1) For the destruction or damaging of standing timber or other property in order to provide a firebreak;

(2) For damage resulting from the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood; or

(3) Beyond the extent of funds available for such compensation.

History.

Acts 2000, ch. 946, § 1.

Compiler's Notes.

Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

Cross-References.

Eminent domain by public agencies, title 29, ch. 17.

58-2-116. Emergency management.

(a) In addition to prevention measures included in the state and local comprehensive emergency management plans, the governor shall consider, on a continuing basis, steps that could be taken to mitigate the harmful consequences of emergencies. At the governor's direction, state agencies, including, but not limited to, those charged with responsibilities in connection with flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land use planning, and construction standards, shall make studies of emergency mitigation-related matters. The governor, from time to time, shall make such recommendations to the general assembly, local governments, and other appropriate public and private entities as may facilitate measures for mitigation of the harmful consequences of emergencies.

(b) The appropriate state departments or agencies, in conjunction with TEMA, shall continually study the plans, uses and construction of structures and other facilities and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence, manmade or natural. The studies under this subsection (b) shall concentrate

on means of reducing or avoiding the dangers caused by these occurrences or the consequences thereof.

(c) If TEMA believes, on the basis of the studies or other competent evidence, that:

(1) An area is susceptible to an emergency of catastrophic proportions without adequate warning;

(2) Existing building standards and land use controls in that area are inadequate and could add substantially to the magnitude of the emergency; and

(3) Changes in zoning regulations, other land use regulations, or building requirements are essential in order to further the purposes of this section, the agency shall specify the essential changes to the governor. If the governor, upon review of the recommendation, finds, after public hearing that changes are essential, the governor shall so recommend to the agencies or political subdivision with jurisdiction over the area and subject matter. If no action, or insufficient action, pursuant to the governor's recommendations is taken within the time specified by the governor, the governor shall so inform the general assembly and request legislative action appropriate to mitigate the impact of such an emergency.

History.
Acts 2000, ch. 946, § 1.

Compiler's Notes.
Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

58-2-117. Lease or loan of state property; transfer of state personnel.

Notwithstanding any inconsistent provision of law:

(1) Whenever the governor deems it to be in the public interest, the governor may:

(A) Authorize any department or agency of the state to lease or lend, on such terms and conditions as it may deem necessary to promote the public welfare and protect the interests of the state, any real or personal property of the state government, to the president of the United States, the heads of the armed forces of the United States, or the various federal emergency management agencies of the United States; and

(B) Enter into a contract on behalf of the state for the lease or loan to any political subdivision of the state, on such terms and conditions as the governor may deem necessary to promote the public welfare and protect the interests of this state, of any real or personal property of the state government, or the temporary transfer or employment of personnel of the state government to or by any political subdivision of the state;

(2) The governing body of each political subdivision of the state may:

(A) Enter into such contract or lease with this state, accept any such loan, or employ such personnel, and such political subdivision may equip,

maintain, utilize, and operate any such property and employ necessary personnel therefor in accordance with the purposes for which such contract is executed; and

(B) Do all things and perform any and all acts which it may deem necessary to effectuate the purpose for which such contract was entered into.

History.
Acts 2000, ch. 946, § 1.

Compiler's Notes.
Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

Attorney General Opinions.
Appointment of county officials, OAG 97-068 (5/12/97).

58-2-118. Orders and rules.

(a) Upon being authorized by the governor, TEMA, or other state department or agency, the political subdivisions of the state and other agencies designated or appointed by the governor, or in the TEMP, are authorized and empowered to make, amend, and rescind such orders and rules as are necessary for emergency management purposes and to supplement the carrying out of this chapter, but which are not inconsistent with any orders or rules adopted by an EMA or by any state agency exercising a power delegated to it by the governor or the agency.

(b) In order to attain uniformity so far as practicable throughout the country in measures taken to aid emergency management, all action taken under this chapter and all orders and rules made pursuant to such sections shall be taken or made with due consideration of the orders, rules, actions, recommendations, and requests of federal authorities relevant thereto and, to the extent permitted by law, shall be consistent with such orders, rules, actions, recommendations, and requests.

History.
Acts 2000, ch. 946, § 1.

Compiler's Notes.
Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

58-2-119. Enforcement.

It is the duty of every EMA established pursuant to this chapter and the officers and personnel thereof, to execute and enforce such orders, rules and regulations as may be made by the governor under authority of this chapter.

Each such organization shall have available for inspection at its office all orders, rules and regulations made by the governor, or under the governor's authority.

History.
Acts 2000, ch. 946, § 1.

Compiler's Notes.
Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

58-2-120. Penalties.

In the event of an emergency declared pursuant to this chapter, any person or representative thereof violating any order, rule or regulation promulgated pursuant to this chapter commits a Class A misdemeanor.

History.
Acts 2000, ch. 946, § 1.

Compiler's Notes.
Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

Cross-References.
Emergency management powers of political subdivisions, § 58-2-110.
Interstate civil defense and disaster compact, title 58, ch. 2, part 4.
Penalty for Class A misdemeanor, § 40-35-111.

58-2-121. Liability.

Any person, public or private, owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege or otherwise permits the designation by TEMA or EMA for the use of the whole or any part of such real estate or premises for the purpose of sheltering persons during an actual, impending, mock, or practice emergency, together with such person's successor in interest, if any, shall not be liable for:

(1) The death of, or injury to, any person on or about such real estate or premises during the actual, impending, mock, or practice emergency; or

(2) Loss of, or damage to, the property of such person, solely by reason or as a result of such license, privilege, designation, or use, unless the gross negligence or the willful and wanton misconduct of such person owning or controlling such real estate or premises or such person's successor in interest is the proximate cause of such death, injury, loss, or damage occurring during such sheltering period.

History.
Acts 2000, ch. 946, § 1.

Compiler's Notes.
Former part 1, §§ 58-2-101 — 58-2-132 (Acts

1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

58-2-122. Liberality of construction.

This part shall be construed liberally in order to effectuate the part's purposes.

History.
Acts 2000, ch. 946, § 1.

Compiler's Notes.
Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

58-2-123. Radiological emergency preparedness.

(a) **Purpose and intent.** It is the purpose of this section to establish the means by which certain radiological emergency response plans and preparedness requirements of the United States nuclear regulatory commission and the federal emergency management agency can be developed and tested by the state, the appropriate counties, and each operator licensed by the United States nuclear regulatory commission to operate a commercial nuclear electric generating facility. It is the express intent of the general assembly that no department, commission, agency, or political subdivision of the state be considered to have assumed or be responsible for the funding of any activity or program required by this section from any sources of funds other than those specifically identified in this section.

(b) **Definitions.** For the purposes of this section, the following terms have the meanings indicated:

(1) "Appropriate county" means a county which is required by the United States nuclear regulatory commission or the federal emergency management agency to be designated a risk or a host county;

(2) "Facility" means a commercial nuclear electric generating reactor operated for the purpose of providing heat to produce electricity for sale to persons other than the owner of the facility;

(3) "Operator" means that person who has applied for or who has been granted a license by the United States nuclear regulatory commission for the operation of a facility; and

(4) "Plans" means the radiological emergency response plans and preparedness in support of nuclear power plants requirements, including facilities and equipment, currently contained in nuclear regulatory commission regulation 0654 (NUREG-0654) and FEMA-radiological emergency

plan 1 (FEMA-REP-1) or as may be required by cognizant federal agencies in the future.

(c) **Emergency response plans.** In addition to the other plans required by this chapter, TEMA shall develop, prepare, test, and implement as needed, in conjunction with the appropriate counties and the affected operator, such radiological emergency response plans and preparedness requirements as may be imposed by the United States nuclear regulatory commission or the federal emergency management agency as a requirement for obtaining or continuing the appropriate licenses for a commercial nuclear electric generating facility.

(d) **Powers and duties.** In implementing the requirements of this section, the director of the agency or the director's designated representative, shall:

(1) Negotiate and enter into such additional contracts and arrangements among the agency, appropriate counties, and each operator to provide for the level of funding and the respective roles of each in the development, preparation, testing, and implementation of the plans;

(2) Evaluate and determine the adequacy of the plans based upon consultations with the United States nuclear regulatory commission and other agencies, as appropriate, and upon the results of such tests as may be conducted;

(3) Limited to such funding as is available based upon the requirements of subdivision (d)(5), require the participation of appropriate counties and operators in the development, preparation, testing, or implementation of the LANs as needed;

(4) Determine the reasonableness and adequacy of the provisions, terms, and conditions of the plans and, in the event the appropriate counties and the operators cannot agree, resolve such differences and require compliance by the appropriate counties and the operators with the plans. In resolving such differences, the director shall consider:

(A) The requirements and parameters placed on the operators by federal law and agencies;

(B) The reasonableness and adequacy of the funding for appropriate counties from any sources of funds other than local revenue sources; and

(C) The reasonableness and appropriateness of the costs to the appropriate counties likely to be incurred in complying with the provisions, terms and conditions of the plans;

(5) Receive, expend, and disburse such funds as are made available by each licensee pursuant to this section; and

(6) Limited to such funding as is available based upon the requirements of subsection (e), coordinate all activities undertaken pursuant to this section or required of appropriate counties and operators by any federal or state agency.

(e) **Funding.** All funds for the implementation of this section shall be provided by the operators as required by subsection (d), except that operators may enter into bilateral agreements with other state agencies or appropriate counties when necessary. No political subdivision of the state shall be considered to have obligated or consented to have obligated any funds from any local revenue source whatsoever by complying with this section.

History.
Acts 2000, ch. 946, § 1.

Compiler's Notes.
Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

58-2-124. Suspension letter — Contents.

The Tennessee emergency management agency shall deliver a copy of any suspension letter to the member of the senate and the member of the house of representatives who represents such area, and to the principal officer of the local legislative body of the county and municipality, if applicable. Such notice shall contain the date of suspension, the amount of suspension, reasons for the suspension, and the length of suspension. For the purposes of this section, "suspension" includes the suspension of any federal funds or state funds that are related to the emergency management program. A suspension letter shall include a synopsis of the following:

(1) Task forecast agreement;
(2) Quarterly activity reports;
(3) Plans;
(4) Training;
(5) Exercises;
(6) Public awareness;
(7) RADEF equipment checked;
(8) Emergency and missions;
(9) Administrative;
(10) Mitigation programs;
(11) Personnel and facilities; and
(12) Effectiveness.

History.
Acts 2000, ch. 686, § 3.

Compiler's Notes.
Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

58-2-125. Acceptance of gifts.

The governor, on behalf of the state, may accept a gift of funds from any person, firm, or corporation for the purpose of providing funding for emergency relief services. Gifted funds shall be deposited in the emergency and contingency fund. The emergency and contingency fund may be used for any purpose authorized by law to be allowed on executive order of the governor.

History.
Acts 2006, ch. 942, § 1.

Compiler's Notes.
Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

58-2-126. First responders from local emergency management agencies — Death benefit.

(a) As used in this section:

(1) "First responders from local emergency management agencies" means emergency management agency personnel, including but not limited to, emergency managers who, as first responders:

(A) Go directly to the scene of an emergency; or

(B) Provide direct logistical support during the emergency and may go to and from a disaster or emergency area; and

(2) "Local emergency management agency" means an organization created in accordance with this chapter to discharge the emergency management responsibilities and functions of a political subdivision.

(b) All local emergency management agency personnel are considered first responders from local emergency management agencies with all the rights, benefits, privileges, and protections available to them pursuant to state and local laws.

(c) The estate of any first responder from a local emergency management agency who is killed in the line of duty is entitled to receive the sum of twenty-five thousand dollars ($25,000), with payment to be made from the general fund after receipt by the department of finance and administration of a certified death certificate and an affidavit from the decedent's employer that the decedent was killed in the line of duty.

History.
Acts 2017, ch. 408, § 2.

Compiler's Notes.
Former part 1, §§ 58-2-101 — 58-2-132 (Acts 1943, ch. 46, § 1; Acts 1943, ch. 85, § 3; mod. C. Supp. 1950, §§ 5755.22, 5755.27 (Williams, § 5755.29); Acts 1951, ch. 81, §§ 1, 2, 4-17 (Williams, §§ 5755.39, 5755.40, 5755.42-5755.55); Acts 1955, ch. 167, § 2-5; impl. am. Acts 1959, ch. 9, § 3; 1968, ch. 479, § 1-6; Acts 1969, ch. 188, § 1, 2; impl. am. Acts 1972, ch. 829, § 7; 1975, ch. 54, §§ 4-9; 1976, ch. 541, §§ 1, 2; 1977, ch. 303, § 17-19; T.C.A. (orig. ed.), § 7-601 — 7-605, 7-607 — 7-633; Acts 1981, ch. 336, §§ 1-5; Acts 1982, ch. 939, § 3; Acts 1983, ch. 429, §§ 21,22; Acts 1984, ch. 723, § 1; Acts 1989, ch. 591, § 111), concerning general emergency provisions, was repealed by Acts 2000, ch. 946, § 1. For current provisions, see this part.

Effective Dates.
Acts 2017, ch. 408, § 2. July 1, 2017.

58-2-127. Prerequisites for employment as a director of a local emergency management agency.

(a) As a prerequisite to receiving an offer of employment as the director of a local emergency management agency, the candidate shall provide evidence satisfactory to the CLEO that the applicant:

(1) Is at least eighteen (18) years of age;

(2) Is a citizen of the United States and of this state;

(3) Is a high school graduate or possesses equivalency;

(4) Has not been convicted or pled guilty to or entered a plea of nolo contendere to any felony charge;

(5) Has a valid Tennessee driver license; and

(6)(A) Has graduated and received a baccalaureate degree;

(B) Has graduated and received an associate's degree and possesses at least two (2) years experience in an emergency management or related field;

(C) Possesses at least four (4) years experience in an emergency management or related field; or

(D) Is serving as director of a local emergency management agency on July 1, 2011.

(b) In addition to the requirements of subsection (a), any director of a local emergency management agency shall possess knowledge of the following subjects:

(1) The principles and practices of emergency management;

(2) Emergency management planning concepts;

(3) Disaster response and the functions of government and private organizations;

(4) Laws and regulations related to emergency operations; and

(5) Working knowledge of computer operations and the operation of other basic office equipment.

(c) In addition to the requirements of subsections (a) and (b), any director of a local emergency management agency shall possess the skill and ability to perform tasks as defined by the county mayor, including, but not limited to, the following tasks:

(1) Plan, organize, assign, inspect, and direct the work of others;

(2) Evaluate situations and make coherent decisions;

(3) Express ideas clearly, concisely, and convincingly, both orally and in writing. This requirement includes the ability to communicate effectively under stressful conditions during emergency situations;

(4) Establish and maintain an effective working relationship with the public, businesses, industries, volunteers, and employees;

(5) Operate an emergency management response vehicle and communications equipment;

(6) Work from a mobile unit and outdoors in all types of weather conditions during emergency and simulated situations; and

(7) Direct the activities of a twenty-four-hour, seven-day-a-week operation.

(d) A local emergency management agency director is under executive direction.

(e) A local emergency management agency director's responsibilities include, but are not limited to, the following:

(1) Coordinate and assist in the revision and update of the local emergency operations plan and field operating guides in conjunction with elected and appointed local government officials and private, volunteer, and civic organizations;

(2) Develop and manage the local agency's annual budget in accordance with local guidelines;

(3) Collect initial disaster intelligence information, extract essential elements of information, and prioritize use of critical resources;

(4) Prepare and transmit situation reports to TEMA as directed by state procedures;

(5) Assess the impact of major emergencies and initiate requests for declaration of emergency for the CLEO's signature;

(6) Serve as the focal point for damage assessment information and coordinate all relief activities through the CLEO and the regional and state emergency operations center;

(7) Promote and supervise the development of various emergency management related public education and information services, such as training programs, brochures, speaking opportunities, and media programs;

(8) Develop and maintain an emergency operations center to ensure direction, control, and continuity of local government during emergencies and disasters;

(9) Conduct hazardous analysis, capability assessment and vulnerability analysis, and make periodic updates to same. The director is "on call" for response to any type of disaster or major emergency: natural, manmade, or technological;

(10) Provide assistance to private sector organizations on issues pertaining to emergency management and homeland security;

(11) Provide resource coordination and technical assistance during major emergencies and disasters;

(12) Prepare after-action reports as required;

(13) Development and implementation of all activities relative to emergency management within the territorial limits of the emergency management area for which the director serves as director;

(14) Establish emergency management standards within the territorial limits of the emergency management area for which the director serves as director. This responsibility includes the development and implementation of activities which support the national incident management system (NIMS) to mitigate, prepare for, respond to, and recover from major emergencies, terrorist events, and disasters; and

(15) Perform other duties as directed by the CLEO.

(f) In addition to the duties and responsibilities enumerated in subsection (e), a local emergency management agency director shall:

(1) Complete FEMA independent study (IS) courses in a timely manner as required by TEMA and local guidelines;

(2) Within the first twenty-four (24) months of employment, or, in the case of a person who is serving as director of a local emergency management agency on July 1, 2011, by June 30, 2013, complete the TEMA hazardous materials operations level, damage assessment workshop, and any NIMS courses that are offered during that twenty-four-month period. If the TEMA hazardous materials operations level or damage assessment workshop is not offered during the first twenty-four (24) months of a director's term of employment, or, in the case of a person who is serving as director of a local

emergency management agency on July 1, 2011, during the period of July 1, 2011 through June 30, 2013, the director shall take those courses at the earliest opportunity after the expiration of such time period. A director shall attend additional courses that are offered by TEMA as the director's time and schedule permit;

(3) Apply for emergency management professional certifications in a timely manner; and

(4) Independently maintain current knowledge of new technologies related to emergency management.

History. Acts 2011, ch. 365, § 2; T.C.A. § 58-2-133.

Code Commission Notes. This section was renumbered from § 58-2-133 to § 58-2-127 by authority of the Code Commission in 2018.

58-2-128. Development of plan for broadcasters to respond to emergency — Training program for emergency response broadcasters — Access to areas affected by emergency.

(a) A state organization representing the majority of broadcasters in this state, in cooperation with the state and local emergency management agencies, may develop plans for preparing for and responding appropriately to an emergency or disaster.

(b) Any state organization that represents the majority of the state's broadcasters may establish a program for training and certifying broadcast engineers and technical personnel as emergency response broadcasters. Any such program established pursuant to this subsection (b) shall:

(1) Be consistent with the federal law and guidelines;

(2) Provide training and education concerning restoring, repairing, and resupplying any facilities and equipment of a broadcaster in an area affected by an emergency; and

(3) Provide training and education concerning the personal safety of an emergency broadcaster in an area affected by an emergency.

(c) To the extent practical and consistent with not endangering public safety or inhibiting recovery efforts, state and local officers and workers and government agencies shall allow emergency response broadcasters access to an area affected by an emergency for the purpose of restoring, repairing, or resupplying any facility or equipment critical to the ability of a broadcaster to acquire, produce, and transmit essential public information programming, including, without limitation, repairing and maintaining transmitters and generators and transporting fuel for generators.

(d) No emergency response broadcaster shall access an area affected by an emergency for the purpose of creating audio or video program content or transmitting information to the public.

History.
Acts 2014, ch. 730, § 3; T.C.A. § 58-2-134.

Code Commission Notes. This section was renumbered from § 58-2-134 to § 58-2-128 by authority of the Code Commission in 2018.

Compiler's Notes.
For the Preamble to the act concerning emergency preparedness, please refer to Acts 2014, ch. 730.

Acts 2014, ch. 730 § 1 provided that this act, which enacted this section, shall be known and may be cited as the "Emergency Response Broadcasters Act."

PARTS 2, 3

[RESERVED]

PART 4

CIVIL DEFENSE COMPACTS

58-2-401. Authority for compact.

The governor is hereby authorized in the name of the state of Tennessee to enter into civil defense and disaster compacts with the several states, and to enter into an emergency management assistance compact by and between participating states, in order to provide mutual aid among the contracting states in meeting any emergency or disaster from enemy attack, sabotage or other hostile action.

History.
Acts 1951, ch. 160, § 1 (Williams, § 5755.56); T.C.A. (orig. ed.), § 7-701; Acts 1995, ch. 247, § 1; 2010, ch. 745, § 1.

Compiler's Notes.
The Civil Defense and Disaster Compact, created by this section, terminates June 30, 2020. See §§ 4-29-112, 4-29-241.

Cross-References.
Interstate lease or loan of state property and transfer of state personnel in event of emergency, § 58-2-117.

Political subdivisions authorized to enter into mutual aid agreements with civil defense agencies or organizations of other states, § 58-2-120.

58-2-402. Text of compact.

The civil defense and disaster compact referred to in § 58-2-401 which the governor of this state is authorized to execute on behalf of the state of Tennessee is as follows:

CIVIL DEFENSE AND DISASTER COMPACT

The contracting states solemnly agree:

Article 1.

The purpose of this compact is to provide mutual aid among the states in meeting any emergency or disaster from enemy attack, including sabotage and subversive acts and direct attacks by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full and effective utilization of the resources of the respective states, including such resources as may be available from the United States government or any other source are essential to the safety, care and welfare of the people thereof in the event of enemy attack or other emergency, and any other resources, including

personnel, equipment or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the civil defense agencies or similar bodies of the states that are parties hereto. The directors of civil defense of all party states shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

Article 2.

It shall be the duty of each party state to formulate civil defense plans and programs for application within such state. There shall be frequent consultation between the representatives of the states and with the United States government and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out such civil defense plans and programs, the party states shall so far as possible provide and follow uniform standards, practices and rules and regulations, including:

(a) Insignia, armbands and any other distinctive articles to designate and distinguish the different civil defense services;

(b) Blackouts and practice blackouts, air-raid drills, mobilization of civil defense forces and other tests and exercises;

(c) Warnings and signals for drill or attacks and the mechanical devices to be used in connection therewith;

(d) The effective screening or extinguishing of all lights and lighting devices and appliances;

(e) Shutting off water mains, gas mains, electric power connections and the suspension of all other utility services;

(f) All materials or equipment used or to be used for civil defense purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party state;

(g) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during and subsequent to drills or attacks;

(h) The safety of public meetings or gatherings; and

(i) Mobile support, or mobile reserve units.

Article 3.

Any party state requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided, that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall extend to the civil defense forces of any other state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges and immunities as if they were performing their duties in the state in which normally employed or rendering services. Civil defense forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the civil defense authorities of the state receiving assistance.

Article 4.

Whenever any person holds a license, certificate or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical or other skills, such person may render aid involving such skill in any party state to meet an emergency or disaster and such state shall give due recognition to such license, certificate or other permit as if issued in the state in which aid is rendered.

Article 5.

No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

Article 6.

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two (2) or more states may differ from that appropriate among other states party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or states. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

Article 7.

Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

Article 8.

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in, the operation of any equipment answering a request for aid, and for the cost incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and, provided further, that any two (2) or more party states may enter into supplementary agreements establishing a different allocation of costs as among those states. The United States government may relieve the party states receiving aid from any liability and reimburse the party state supplying civil defense forces for

the compensation paid to and the transportation, subsistence and maintenance expenses of such forces during the time of the rendition of such aid or assistance outside the state and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment or facilities so utilized or consumed.

Article 9.

Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party states and the various local civil defense areas thereof. Such plans shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care and like items. Such expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States government under plans approved by it. After the termination of the emergency or disaster, the party state of which the evacuees are resident shall assume the responsibility for the ultimate support or repatriation of such evacuees.

Article 10.

The committee established pursuant to article 1 of this compact may request the civil defense agency of the United States government to act as an informational and coordinating body under this compact, and representatives of such agency of the United States government may attend meetings of such committee.

Article 11.

This compact shall become binding between this state and any contiguous state upon the specific ratification hereof by this state, and such contiguous state as between themselves and shall be subject to approval by congress unless prior congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the civil defense agency and other appropriate agencies of the United States government.

Article 12.

This compact shall continue in force and remain binding on each party state until the general assembly or the governor of such party state takes action to

withdraw therefrom. Such action shall not be effective until thirty (30) days after notice thereof has been sent by the governor of the party state desiring to withdraw to the governors of all other party states.

Article 13.

This compact shall be construed to effectuate the purposes stated in article 1. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

History.

Acts 1951, ch. 160, § 2 (Williams, § 5755.57); T.C.A. (orig. ed.), § 7-702.

Cross-References.

Governor authorized to enter into civil defense and mutual aid arrangements with other states, § 58-2-108.

Interstate lease or loan of state property and transfer of state personnel in event of emergency, § 58-2-117.

Reimbursement for expenses of and payments for compensation, death or injury to mobile reserve units from other states, § 58-2-113.

Attorney General Opinions.

Ability of out-of-state health care professionals to provide emergency assistance in Tennessee, OAG 07-107 (7/13/07).

58-2-403. Text of Emergency Management Assistance Compact.

The emergency management assistance compact referred to in § 58-2-401 which the governor is authorized to execute on behalf of the state is as follows:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I — PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II — GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and the intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the Federal Government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III — PARTY STATE RESPONSIBILITIES

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and carrying them out, the party states, insofar as practical, shall:

i. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

ii. Review party state's individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

iii. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

iv. Assist in warning communities adjacent to or crossing the state boundaries.

v. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

vi. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

vii. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of

another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to the authorized representative. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty (30) days of the verbal request. Requests shall provide the following information:

i. A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

ii. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

iii. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV — LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided, that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

ARTICLE V — LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed,

certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI — LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII — SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII — COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX — REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII shall not be reimbursable under this provision.

ARTICLE X — EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation or such evacuees.

ARTICLE XI — IMPLEMENTATION

A. This compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty (30) days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII — VALIDITY

Chapter 247 of the Public Acts of 1995 shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of Chapter 247 of the Public Acts of 1995 and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII — ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of title 18, United States Code.

History.
Acts 1995, ch. 247, § 2; 2010, ch. 745, § 2.

Compiler's Notes.
The Emergency Management Assistance Compact, created by this section, terminates June 30, 2020. See §§ 4-29-112, 4-29-241.

Attorney General Opinions.
Disaster recovery volunteers and the State of Tennessee are immune for the negligent operation of a state vehicle by a volunteer en route to a requesting state under the Compact if traveling to a disaster is considered rendering aid in another state pursuant to this section; requesting states are required to provide representation to disaster recovery volunteers to the same extent they provide representation to their own agents, OAG 04-174 (12/17/04).

If not immune pursuant to this section, volunteers are immune as provided in T.C.A. § 9-8-307(h) in Tennessee, and the State of Tennessee is liable for their negligence, OAG 04-174 (12/17/04).

Legal protection of law enforcement officers who self-deploy in response to disasters, OAG 06-029 (2/8/06).

Ability of out-of-state health care professionals to provide emergency assistance in Tennessee, OAG 07-107 (7/13/07).

PART 5

EMERGENCY SEVERE WEATHER INFORMATION

58-2-501. Emergency severe weather information system.

(a) This part shall be known and cited as the "Tennessee Emergency Severe Weather Information Act."

(b) The director of the Tennessee emergency management agency may make agreements with the national oceanic and atmospheric administration of the United States department of commerce for the purpose of creating, developing and maintaining a statewide weather radio system for the communication of weather warnings and emergency information to the citizens of Tennessee.

(c) It is the intent of the general assembly that the extent of such agreements and the cost of implementing and operating such weather radio system shall be within the appropriations of the general assembly for such purpose.

History.
Acts 1977, ch. 157, §§ 1, 2; T.C.A., §§ 7-634, 7-6-201, 58-2-201; Acts 2000, ch. 946, § 2.

Compiler's Notes.
Former part 5, (Acts 1978, ch. 852, §§ 1, 2; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A., §§ 7-1301 — 7-1318; Acts 1989, ch. 591, § 112), concerning disaster relief funding, was repealed by Acts 2000, ch. 946, § 1. For present law, see § 58-2-109 et seq.

PART 6

ACCIDENTS INVOLVING HAZARDOUS MATERIALS

58-2-601. Report to the Tennessee emergency management agency of accidents involving hazardous materials.

Notwithstanding any law to the contrary, in addition to any reports required by law, any person who is transporting hazardous materials and placarded as carrying such materials as required by regulations of the department of safety and/or department of transportation shall report any accident or incident in which such materials are released from the container in which such materials are being transported to the Tennessee emergency management agency as soon as practicable after such accident or incident. Any other person having knowledge of such accident or incident shall also report such accident or incident to the Tennessee emergency management agency.

History.
Acts 1979, ch. 188, § 1; T.C.A., § 7-6-301; Acts 1995, ch. 305, § 117; T.C.A., § 58-2-301; Acts 2000, ch. 946, § 2.

Compiler's Notes.
Former part 6, (Acts 1987, ch. 155, §§ 1-9; 1988, ch. 499, § 1; Acts 1998, ch. 1053, § 1), concerning local government emergency assistance, was repealed by Acts 2000, ch. 946, § 1, effective July 1, 2000.

58-2-602. Notification of community officials.

As soon as practicable after receiving any such accident or incident report, such agency shall notify the appropriate officials in the community in which such accident or incident occurred.

History.
Acts 1979, ch. 188, § 2; T.C.A., § 7-6-302; § 58-2-302; Acts 2000, ch. 946, § 2.

Compiler's Notes.
Former part 6, (Acts 1987, ch. 155, §§ 1-9; 1988, ch. 499, § 1; Acts 1998, ch. 1053, § 1), concerning local government emergency assistance, was repealed by Acts 2000, ch. 946, § 1, effective July 1, 2000.

58-2-603. Records and reports of accidents maintained.

The Tennessee emergency management agency shall maintain records of all such accident or incident reports, together with reports from other agencies of state and local governments which respond to such accident or incident.

History.
Acts 1987, ch. 155, § 3; T.C.A., § 58-2-303; 2000, ch. 946, § 2.

Compiler's Notes.
Former part 6, (Acts 1987, ch. 155, §§ 1-9; 1988, ch. 499, § 1; Acts 1998, ch. 1053, § 1), concerning local government emergency assistance, was repealed by Acts 2000, ch. 946, § 1, effective July 1, 2000.

58-2-604. Removal or abatement of hazardous substances discharge.

(a) The county legislative body or the county emergency management agency (or other body authorized by the county legislative body) is authorized to take such steps as necessary to remove or abate any discharge of hazardous

substances associated with a transportation incident or an emergency spill within the county, or to contract with a private entity for removal of the same; and, further, have the authority to recover costs from any person or persons responsible for causing a discharge of hazardous substances that requires emergency action. This section does not apply to a person, as defined in § 68-212-104, or a liable party, as defined in § 68-212-202, operating under a permit or an order issued by the department of environment and conservation.

(b) For the purposes of this section:

(1)(A) "Costs" means those necessary and reasonable costs incurred by the county legislative body or emergency management agency or its authorized agents in connection with removing or abating hazardous substance discharges; provided, that to the extent criteria and methods for response actions prescribed under 40 CFR 300, as amended, may be applied to the type of material involved and the conditions of the spill, release or discharge, such costs shall only apply if those criteria were employed in the county's response;

(B) "Costs" also includes reasonable attorney's fees if the county legislative body, the county emergency management agency, or other body authorized by the county legislative body prevails in an action to recover its expenses from any person or persons responsible for causing a discharge of hazardous substances that requires emergency action; and

(2) "Hazardous substance" means any substance as defined in § 68-131-102.

History.

Acts 1992, ch. 950, §§ 1, 2; T.C.A., § 58-2-304; Acts 2000, ch. 946, § 2.

Compiler's Notes.

Former part 6, (Acts 1987, ch. 155, §§ 1-9; 1988, ch. 499, § 1; Acts 1998, ch. 1053, § 1), concerning local government emergency assistance, was repealed by Acts 2000, ch. 946, § 1, effective July 1, 2000.

PART 7

EARTHQUAKES

58-2-701. Interstate Earthquake Compact of 1988.

The general assembly of the state of Tennessee hereby ratifies a compact on behalf of the state of Tennessee with any other state legally joining therein in the form substantially as follows:

ARTICLE I. PURPOSE

The purpose of this compact is to provide mutual aid among the states in meeting any emergency or disaster caused by earthquakes or other seismic disturbances. The full, immediate, and effective utilization of the resources of the respective states, including such resources as may be available from the United States government or any other source, is necessary to provide needed short-term earthquake disaster assistance to states requesting aid. These resources shall be incorporated into a plan or plans of mutual aid to be developed among the appropriate agencies of states that are parties to this

compact. These agencies shall develop and follow procedures designed to assure the maintenance of resource inventories and the exchange of information about earthquakes and disaster response. It is the policy of the party states to carry out this compact in a spirit of cooperation to provide the most effective earthquake disaster assistance to the residents of the states and to provide an equitable division of any necessary earthquake relief efforts in order to avoid a disproportionate allocation of contributed resources.

ARTICLE II. INTRASTATE PLANNING

Each party state shall have the duty to formulate earthquake relief plans and programs within such state. There shall be frequent consultation between the representatives of such states and with the United States government and the free exchange of relief plans and information, including inventories of any materials and equipment available for response to earthquake emergencies. To this end, each state will maintain a bank of standardized data which will establish a comprehensive listing of all resources within the seven-state region that might be needed during an earthquake disaster. The inventory will be shared equitably among the party states in the event of an earthquake or other emergency, recognizing each state's primary responsibility to assist and protect its residents. Each party state shall also share any available information on earthquake forecasts and reports of seismic activity.

ARTICLE III. RESPONSIBILITIES OF STATES

Whenever the governor of a party state requests aid from the governor of another party state pursuant to this compact in coping with an earthquake emergency, the requested state shall make available all possible aid to the requesting state consonant with the maintenance of protection for its residents and the policies stated in Article I.

ARTICLE IV. RECIPROCITY

Whenever the officers or employees of any party state are rendering aid in another state pursuant to the request of another party state under this compact, those officers or employees shall, while under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges, and immunities as comparable officers and employees of the state to which they are rendering aid. Any person holding a license, certificate or other permit issued by any state, demonstrating the meeting of qualifications for professional, mechanical, or other skills may render aid involving such skill in any party state to meet an earthquake emergency, and the state in which aid is rendered shall give due recognition to such license, certificate, or other permit as if issued in the state in which aid is rendered.

ARTICLE V. IMMUNITY

No party state or its officers, employees or other persons, certified by party

states pursuant to agreed upon criteria and procedures for certification, rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on their part while so engaged, or on account of maintenance or use of any equipment or supplies in connection therewith.

ARTICLE VI. SUPPLEMENTARY AGREEMENTS

Nothing in this agreement precludes any state from entering into supplementary agreements with another state or states for the undertaking of mutual aid and exchange of information in the event of an earthquake emergency. These supplementary agreements may comprehend, but are not limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

ARTICLE VII. COMPENSATION

Each party state shall provide compensation and death benefits to its injured officers, employees or other persons certified by party states, pursuant to agreed upon criteria and procedures for certification, and the representatives of deceased officers, employees and other certified persons in case officers, employees or certified persons sustain injuries or death while rendering aid in another state pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer, employee or certified person was regularly employed.

ARTICLE VIII. REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in, the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such request, including amounts paid under Article VII; provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost. Any two (2) or more party states may enter into supplementary agreements establishing a different allocation of costs as among those states. The United States government may relieve the party state receiving aid from any liability and reimburse the party state rendering aid for loss, damage or expense incurred within the terms of this article.

ARTICLE IX. EVACUATION PLANS

Plans for the orderly evacuation and reception of the civilian population as the result of an earthquake emergency shall be worked out from time to time between representatives of the party states. Such plans shall include the

manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. The plans must provide that the party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for the evacuees, for the expenditures and transportation, food, clothing, medicines and medical care and like items. These expenditures shall be reimbursed by the party state of which the evacuees are residents or by the United States government under plans approved by it. The party state of which the evacuees are residents shall assume the responsibility for the ultimate support or repatriation of such evacuees.

ARTICLE X. AVAILABILITY

Any state of the United States shall be eligible to become party to this compact. As to any eligible party state, this compact shall become effective when its legislature shall have enacted it into law; provided, that it shall not become initially effective until enacted into law by two (2) party states.

ARTICLE XI. WITHDRAWAL

Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until ninety (90) days after the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing the governors of the action of the legislature in repealing the compact and declaring an intention to withdraw. A withdrawing state shall be liable for any obligations which it may have incurred on account of its party status up to the effective date of withdrawal, except that if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal it shall remain liable to the extent of such obligation.

ARTICLE XII. SEVERABILITY

This compact is to be construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances is not to be affected by it.

History.
Acts 1988, ch. 616, § 1.

Compiler's Notes.
The Interstate Earthquake Compact of 1988, created by this section, terminates June 30, 2020. See §§ 4-29-112, 4-29-241.

Law Reviews.
When the Earth Moves and Buildings Tumble, Who Will Pay? — Tort Liability and Defenses for Earthquake Damage within the New Madrid Fault Zone, 22 Mem. St. U.L. Rev. 1 (1991).

Attorney General Opinions.
Ability of out-of-state health care professionals to provide emergency assistance in Tennessee, OAG 07-107 (7/13/07).

PART 8

UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS ACT OF 2007

58-2-801. Short title.

This part shall be known and may be cited as the "Tennessee Uniform Emergency Volunteer Health Practitioners Act of 2007."

History.
Acts 2007, ch. 579, § 2.

Cross-References.
Civil Defense and Disaster Compact, title 58, ch. 2, part 4.
Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq.
Interstate Earthquake Compact of 1988, § 58-2-701.
Emergency Management Assistance Compact, § 58-2-403.

58-2-802. Part definitions.

(a) As used in this part, unless the context otherwise requires:

(1) "Coordinating entity" means an entity that acts as a liaison to facilitate communication and cooperation between source and host entities but does not provide health services in the ordinary course of its activities as liaison;

(2) "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care or services in or for a health facility;

(3) "Department" means the department of health;

(4) "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health services provided by volunteer health practitioners and that:

(A) Is designated or recognized as a provider of those services pursuant to a disaster response and recovery plan adopted by an agency of the federal government, the department or TEMA; or

(B) Regularly plans and conducts its activities in coordination with an agency of the federal government, the department or TEMA;

(5) "Emergency" has the same meaning as used in § 58-2-101;

(6) "Emergency declaration" has the same meaning as "declare a state of emergency" as used in § 58-2-107;

(7) "Emergency management assistance compacts" means the interstate compacts established under parts 4 and 7 of this chapter;

(8) "Entity" means a person other than an individual;

(9) "Health facility" has the same meaning as "facility" as defined in § 68-11-201 and "veterinary facility" as defined in § 63-12-103 licensed under the laws of this or another state to provide health services;

(10) "Health practitioner" means an individual licensed under any chapter of titles 62, 63 or 68, or their counterparts in another state, to provide health services;

(11) "Health services" means:

(A) The provision of treatment, care, advice or guidance, other services, or supplies related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

(i) The following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and

(b) Counseling, assessment, procedures, or other services;

(ii) Sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and

(iii) Funeral, cremation, cemetery, or other mortuary services; or

(B) The provision of treatment, care, advice or guidance, other services, or supplies related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

(i) Diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of vaccine, medicine, surgery, or therapy;

(ii) Use of a procedure for reproductive management; and

(iii) Monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans;

(12) "Host entity" means an entity operating in this state that uses volunteer health practitioners to respond to an emergency;

(13) "License" means authorization by a state to engage in health services that are unlawful without the authorization. "License" includes authorization under the laws of this state to an individual to provide health services based upon a national certification issued by a public or private entity;

(14) "Person" means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(15) "Privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status, and specialized skill;

(16) "Scope of practice" means the extent of the authorization to provide health services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing

authority;

(17) "Source entity" means a person located in this or another state that employs or uses the services of health practitioners authorized to provide health services pursuant to this part;

(18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(19) "TEMA" means the Tennessee emergency management agency; and

(20) "Voluntary health practitioner" means a health practitioner who provides health services, whether or not the practitioner receives compensation for those services. "Voluntary health practitioner" does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate that requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.

History.
Acts 2007, ch. 579, § 3.

Cross-References.
Civil Defense and Disaster Compact, title 58, ch. 2, part 4.
Emergency management powers of the governor, § 58-2-107.
Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq.
Interstate Earthquake Compact of 1988, § 58-2-701.
Emergency Management Assistance Compact, § 58-2-403.

58-2-803. Application of part.

This part shall apply to volunteer health practitioners registered with a registration system that meets the requirements of § 58-2-805 and who provide health services in this state for a host entity while an emergency declaration is in effect.

History.
Acts 2007, ch. 579, § 4.

Cross-References.
Emergency management powers of the governor, § 58-2-107.
Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq.

58-2-804. Limitations, restrictions and regulation — Immediate effect of orders — Requirements of host entities.

(a) While an emergency declaration is in effect, TEMA may limit, restrict, or otherwise regulate:

(1) The duration and scope of practice by volunteer health practitioners;

(2) The geographical areas in which volunteer health practitioners may practice;

(3) The types of volunteer health practitioners who may practice; and

(4) Any other matters necessary to coordinate effectively the provision of health services during the emergency.

(b) An order issued pursuant to subsection (a) may take effect immediately, without prior notice or comment and is not a rule within the meaning of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) A host entity that uses volunteer health practitioners to provide health services in this state shall:

(1) Consult and coordinate its activities with TEMA to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

(2) Comply with any laws relating to the management of emergency health services.

History.
Acts 2007, ch. 579, § 5.

Cross-References.
Emergency management powers of the governor, § 58-2-107.

Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq.

58-2-805. Qualification as a volunteer health practitioner registration system.

(a) To qualify as a volunteer health practitioner registration system, a system must:

(1) Accept applications for the registration of volunteer health practitioners before or during an emergency;

(2) Include information about the licensure and good standing of health practitioners that is accessible by authorized persons;

(3) Be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services are provided under this part; and

(4) Meet one (1) of the following conditions:

(A) Be an emergency system for advance registration of volunteer healthcare practitioners established by a state and funded through the health resources services administration under § 319I of the Public Health Services Act (42 U.S.C. § 247d-7b);

(B) Be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed pursuant to § 2801 of the Public Health Services Act (42 U.S.C. § 300hh);

(C) Be operated by a:

(i) Disaster relief organization;

(ii) Licensing board;

(iii) National or regional association of licensing boards of health practitioners;

(iv) Health facility that provides comprehensive inpatient and outpatient health-care services, including a tertiary care, acute care and/or teaching hospital; or

(v) Governmental entity; or

(D) Be designated by TEMA as a registration system for purposes of this part.

(b) While an emergency declaration is in effect, representatives of TEMA, a person authorized to act on behalf of TEMA, or a host entity may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subsection (a). Confirmation is limited to obtaining identities of the practitioners from the system and

determining whether the system indicates that the practitioners are licensed and in good standing.

(c) Upon request of a person in this state authorized under subsection (b), or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.

(d) A host entity is not required to use the services of a volunteer health practitioner, even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

History.
Acts 2007, ch. 579, § 6.

Cross-References.
Emergency management powers of the governor, § 58-2-107.

Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq.

58-2-806. Practice of volunteer health practitioners in this state while emergency declaration in effect — Limitations on protections while practicing in state.

(a) While an emergency declaration is in effect, a volunteer health practitioner, registered with a registration system that complies with § 58-2-805 and licensed and in good standing in the state upon which the practitioner's registration is based, may practice and use the titles appropriate thereto in this state to the extent authorized by this part as if the practitioner were licensed in this state.

(b) A volunteer health practitioner qualified under subsection (a) is not entitled to the protections of this part if the practitioner is licensed in more than one (1) state and any license of the practitioner is disciplinarily suspended, revoked, or subject to an agency order limiting or restricting practice privileges, or has been voluntarily terminated under threat of sanction.

History.
Acts 2007, ch. 579, § 7.

Cross-References.
Emergency management powers of the governor, § 58-2-107.

Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq.

58-2-807. Effect on credentialing and privileging standards — Waiver or modification of standards.

This part does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

History.
Acts 2007, ch. 579, § 8.

Cross-References.
Emergency management powers of the governor, § 58-2-107.

Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq.

58-2-808. Scope of practice — Sanctions and penalties.

(a) Subject to subsections (b) and (c), a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of this state.

(b) Except as otherwise provided in subsection (c), this part does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services.

(c) TEMA may modify or restrict the health services that volunteer health practitioners may provide pursuant to this part. An order under this subsection (c) may take effect immediately, without prior notice or comment, and is not a rule within the meaning of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) A host entity may restrict the health services that a volunteer health practitioner may provide pursuant to this part.

(e) A volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification, or restriction under this section or that a similarly licensed practitioner in this state would not be permitted to provide the services. A volunteer health practitioner has reason to know of a limitation, modification, or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:

(1) The practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or

(2) From all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

(f) In addition to the authority granted by law of this state other than this part to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

(1) May impose administrative disciplinary sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;

(2) May impose civil penalties pursuant to § 63-1-134 upon a practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and

(3) Shall report any civil penalty imposed upon a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

(g) In determining whether to impose administrative disciplinary sanctions or civil penalties under subsection (f), a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience, and specialized skill.

History.
Acts 2007, ch. 579, § 9.

Cross-References.
Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq.

58-2-809. Limitations on rights, privileges or immunities provided to volunteer health practitioners — Incorporation of volunteers into emergency forces.

(a) This part does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this part. Except as otherwise provided in subsection (b), this part does not affect requirements for the use of health practitioners pursuant to the emergency management assistance compacts.

(b) TEMA, pursuant to the emergency management assistance compacts, may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or employees of this state, a political subdivision of this state, or a municipality or other local government within this state.

History.
Acts 2007, ch. 579, § 10.

Cross-References.
Civil Defense and Disaster Compact, title 58, ch. 2, part 4.
Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq.
Interstate Earthquake Compact of 1988, § 58-2-701.
Emergency Management Assistance Compact, § 58-2-403.

58-2-810. Emergency rules.

TEMA may promulgate emergency rules to implement this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In doing so, TEMA shall consult with the department and shall consult with and consider the recommendations of any other entity established to coordinate the implementation of the emergency management assistance compacts and shall also consult with and consider rules promulgated by similarly empowered agencies in other states to promote uniformity of application of this part and make the emergency response systems in the various states reasonably compatible.

History.
Acts 2007, ch. 579, § 11; 2009, ch. 566, § 12.

Compiler's Notes.
Acts 2009, ch. 566, § 12 provided that the Tennessee code commission is directed to change all references to public necessity rules, wherever such references appear in this code, to emergency rules, as sections are amended and volumes are replaced.

Cross-References.
Civil Defense and Disaster Compact, title 58, ch. 2, part 4.
Emergency management powers of the governor, § 58-2-107.
Interstate Earthquake Compact of 1988, § 58-2-701.
Emergency Management Assistance Compact, § 58-2-403.

58-2-811. Acts or omissions — Vicarious liability — Recovery of damages — Participation in retirement system.

(a) Subject to subsection (b), volunteer health practitioners authorized to

provide health services pursuant to this part are not liable for the payment of a judgment based on their acts or omissions in providing services, nor shall they be named as defendants in an action based on their acts or omissions.

(b) Notwithstanding subsection (a), this section does not apply to:

(1) Willful, wanton, grossly negligent, reckless, or criminal conduct of, or an intentional tort committed by, a volunteer health practitioner; or

(2) An action brought against a volunteer health practitioner:

(A) For damages for breach of contract, other than for contracts related to the provision of health or veterinary services;

(B) By a source or host entity; or

(C) Relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle by a volunteer health practitioner for which this state requires the operator to have a valid operator's license or to maintain liability insurance, other than an ambulance or other emergency response vehicle, vessel, or aircraft operated by a volunteer health practitioner responding to a request for health services or transporting a patient.

(c) Source, coordinating, and host entities are not vicariously liable for the acts or omissions of volunteer health practitioners in providing health services authorized pursuant to this part.

(d) Source, coordinating, and host entities are not liable for civil damages for the operation of, or reliance upon information provided by a registration system, unless the acts or omissions constitute an intentional tort or are willful, wanton, grossly negligent, reckless, or criminal in nature.

(e) Notwithstanding subsection (a), for purposes of recovering damages from the state, volunteer health practitioners shall be considered volunteer state employees under § 8-42-101(3)(B) for purposes of § 9-8-112, for the purposes of recovering damages from the states based on their acts or omissions in providing health services pursuant to this part. The registration of individual volunteer health practitioners with the board of claims required under § 8-42-101(3)(B) shall be made by the registration system under which the volunteer health practitioner was registered; provided, however, that nothing in this part shall authorize any volunteer health practitioner's participation as a member of the Tennessee consolidated retirement system, unless the practitioner was a member at the time the emergency was declared.

History.

Acts 2007, ch. 579, § 12.

Cross-References.

Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 1320d et seq.

Immunity for voluntary provision of health care services, § 63-6-708.

Liability, § 58-2-121.

58-2-812. Workers' compensation benefits.

Notwithstanding § 8-42-101(3)(B) concerning workers' compensation coverage of certain state employees, a volunteer health practitioner who is providing health services in this state pursuant to this part, or who is traveling to or from this state to provide such services, and who is not covered by workers' compensation insurance, shall be considered an employee of this state for purposes of any medical workers' compensation benefits concerning any injury

incurred in traveling or providing the services. Benefits for volunteer health practitioners are limited to those medical benefits provided to state employees under the laws of this state.

History.
Acts 2007, ch. 579, § 13.

58-2-813. Uniformity of law among states.

In applying and construing this part, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History.
Acts 2007, ch. 579, § 14.

Cross-References.
Civil Defense and Disaster Compact, title 58, ch. 2, part 4.

Interstate Earthquake Compact of 1988, § 58-2-701.

Emergency Management Assistance Compact, § 58-2-403.

CHAPTER 3

VETERANS' RIGHTS IN GENERAL

Section
58-3-101. Privileges extended to World War II veterans.
58-3-102. Substitution of military service for occupational experience.
58-3-103. Removal of disability of minor veterans and spouses.
58-3-104. Information furnished to veterans.
58-3-105. Assistance in obtaining benefits.
58-3-106. Branch offices and field services.
58-3-107. Oaths administered by department employees.
58-3-108. Acceptance of aid by department.
58-3-109. County and municipal service offices.
58-3-110. Appropriations for local service offices.
58-3-111. Director of local service office.
58-3-112. Free admission to state parks one day a year.
58-3-113. Tennessee Fallen Heroes Medal.

58-3-101. Privileges extended to World War II veterans.

(a) All privileges, rights and immunities now extended by law to honorably discharged veterans of World War I are extended to honorably discharged veterans of World War II in as full and complete a manner as though such veterans of World War II had been specifically named in each and every statute granting such privileges, rights and immunities to veterans of World War I.

(b) "Honorably discharged veterans of World War II" includes any person who performed active service, as distinguished from service in the reserve, between November 1, 1940 and the termination of World War II in the United States army, United States air forces, United States navy, United States marine corps, United States coast guard, army nurse corps, merchant marine, and specifically includes females in active service in any auxiliary, attached to and under the discipline of any of the above organizations. The privileges extended to World War II veterans shall also include all the civilian groups assimilated as veterans under the federal code by § 401 of Public Law 95-202, the GI Bill Improvement Act of 1977.

History.

Acts 1945, ch. 13, § 1; mod. C. Supp. 1950, § 1012.33 (Williams, § 1012.36); T.C.A. (orig. ed.), § 7-1001; Acts 1990, ch. 985, § 1.

Compiler's Notes.

Acts 1990, ch. 985, § 2 provided that the amendment by that act is for the purpose of clarifying state law to make state law consistent with federal law, and will not incur any expenses to the state in addition to that which the groups provided for under § 401 of Public Law 95-202, the GI Bill Improvement Act of 1977, are already entitled under state law.

The GI Bill Improvement Act of 1977 is codified in 38 U.S.C. § 101 et seq.

Cross-References.

Diplomas for World War II veterans, § 49-2-119.

Contracts with federal agencies for instruction of veterans, § 49-50-401.

Department and commissioner of veterans services, creation, §§ 4-3-101, 4-3-111, 4-3-2503.

Discharges, registration by county register without charge, § 66-24-101.

Motor vehicle registration plates free, disabled veterans, § 55-4-256.

Preference for veterans, § 8-30-307.

Reemployment rights of public employees in military service, §§ 8-33-101 — 8-33-108.

Retirement system, creditable service, title 8, ch. 34, part 6; §§ 8-36-103, 8-36-105.

Teachers' military leave of absence, § 49-5-702.

Law Reviews.

Suddenly Discharged the Combat Continues: Eliminating the Legal Services Gap to Ensure Veterans' Success After Leaving Military Service, 45 U. Mem. L. Rev. 837 (2015).

The Credibility Trap: Notes on a VA Evidentiary Standard, 45 U. Mem. L. Rev. 887 (2015).

58-3-102. Substitution of military service for occupational experience.

(a) The lack of experience in terms of days, weeks, months or years shall not be a barrier to any honorably discharged veteran of World War II seeking to qualify for any position, trade, profession or vocation; provided, that such veteran was engaged in the profession, trade, position or occupation prior to entry into the service; provided further, that the time in days, weeks, months or years spent in the service plus the time previously spent at such trade, profession, vocation or occupation equals the experience required for such trade, position or occupation; and provided further, that such veteran possesses all other necessary qualifications for such trade, position or occupation.

(b) This section shall not apply to any profession requiring great skill and technical knowledge except in cases where the veteran can present satisfactory evidence from the veteran's service record that the veteran was engaged in such profession while in service for a period of time which meets the necessary experience qualifications.

History.

Acts 1947, ch. 186, §§ 1, 2; C. Supp. 1950, § 1012.34 (Williams, § 1012.37); T.C.A. (orig. ed.), § 7-1002.

58-3-103. Removal of disability of minor veterans and spouses.

The disability of minority is removed from all minors who serve with the armed forces of the United States so far as the same is necessary to enable such minors to enter into any and all contracts contemplated and authorized by any legislation, state or federal, granting rights, benefits or privileges to honorably discharged veterans. This removal of such disability shall likewise extend and apply to all contracts necessarily implied and arising out of their acceptance of such benefits, rights or privileges, likewise whenever under the laws of this state, the joinder of the spouse of any such minor in the execution of any instrument shall be necessary to its enforceability and if such spouse be likewise a minor, the disability shall also be removed to the extent necessary to allow the valid and enforceable execution of such instrument by such spouse,

including the execution of all warranty deeds, trust deeds and all other instruments directly or incidentally connected with such benefits, but not further or otherwise.

History.
Acts 1945, ch. 26, § 1; 1947, ch. 195, § 1; mod. C. Supp. 1950, § 1012.32 (Williams, § 1012.35); T.C.A. (orig. ed.), § 7-1003.

Law Reviews.
Statutory Construction — Substitution of Words (1947), 1 Vand. L. Rev. 151.

58-3-104. Information furnished to veterans.

The department of veterans services shall collect all necessary data and information regarding facilities and services available to veterans, their families and dependents, and shall cooperate with all information or service agencies throughout the state in informing such persons regarding the existence or availability of all educational, training and retraining facilities; health, medical, rehabilitation and housing services and facilities; employment and reemployment services; federal, state and local laws affording rights, privileges and benefits to veterans, their families and dependents, and all other matters of similar, related or appropriate nature.

History.
Acts 1945, ch. 40, § 2; C. Supp. 1950, § 1012.9 (Williams, § 1012.11); impl. am. Acts 1959, ch. 9, § 6; Acts 1975, ch. 249, § 4; T.C.A. (orig. ed.), § 7-1006; Acts 2015, ch. 24, § 7.

Compiler's Notes.
Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

58-3-105. Assistance in obtaining benefits.

It shall likewise be the duty of the department of veterans services to assist veterans, their families and dependents in the presentation, proof and establishment of all claims, privileges, rights and other benefits which they may have under federal, state or local laws, and to cooperate with all national, state and local government and private agencies securing services or any benefits to veterans, their families and dependents.

History.
Acts 1945, ch. 40, § 3; mod. C. Supp. 1950, § 1012.10 (Williams, § 1012.12); impl. am. Acts 1959, ch. 9, § 6; Acts 1975, ch. 249, § 5; T.C.A. (orig. ed.), § 7-1007; Acts 2015, ch. 24, § 7.

Compiler's Notes.
Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

Textbooks.
Tennessee Jurisprudence, 18 Tenn. Juris., Military, § 10.

58-3-106. Branch offices and field services.

(a) The commissioner of veterans services shall establish at some place in each congressional district in this state, a branch office in charge of an assistant commissioner or service officer, and such assistant commissioner or

service officer may at least once a month visit the county seat of each county within the assistant commissioner's or service officer's congressional district for the purpose of conferring with and assisting veterans in obtaining the benefits granted to them by this or any other statute of this state or of the United States. In addition thereto, such assistant commissioner or service officer shall actively cooperate with any and all veterans' organizations in each county in the assistant commissioner's or service officer's congressional district in the preparation and presentation of claims on behalf of veterans, and should any county or city or combination thereof provide a service officer to aid honorably discharged veterans, such assistant commissioner or service officer shall likewise actively cooperate with them and shall cooperate with any local organization on questions of placement of veterans in the local employment. Such service officers shall be appointed by the commissioner, with the approval of the governor, and where possible, shall be honorably discharged veterans of some war in which the United States was a participant and shall be as well qualified for the duties imposed on them herein as possible.

(b) The commissioner, from time to time, shall issue instructions, manuals of procedure and other bulletins to such assistant commissioners or service officers for the purpose of familiarizing them with their duties and of rendering them more efficient in the performance thereof. Such assistant commissioners or service officers shall not discriminate for or against any veterans' organization in the performance of any duties and no veteran shall be required to join any veterans' organization as a condition precedent to obtaining cooperation hereunder.

(c) Such service officers or assistant commissioners shall be paid such compensation as may be fixed by the commissioner, upon the approval of the governor, which compensation shall be uniform in all cases so far as possible but in addition thereto, they shall be allowed their necessary traveling expenses when on duty outside the county in which their office is located. Annually, before setting the compensation to be paid to service officers or assistant commissioners, the commissioner shall conduct a survey of the compensation paid to service officers in other states. The commissioner shall consider the results of the survey in setting the compensation of service officers or assistant commissioners.

(d) The commissioner is authorized to rent suitable quarters at some point in each congressional district, if the same cannot be procured otherwise in public buildings, as an office for such assistant commissioner or service officer and may employ in connection therewith as well as in connection with the principal office, such clerical assistance as may be found necessary, all with the approval of the governor, the salaries to be paid to be commensurate with those paid for like services in other departments of the state.

(e) The commissioner may likewise incur such other expenses as may be necessary for the administration of §§ 58-3-104 — 58-3-108, all of the same to be within the appropriation made for the department.

(f) In addition, the commissioner may upon the approval of the governor, establish additional offices in any congressional district where the commissioner finds that one (1) assistant commissioner or service officer is incapable of efficiently handling the volume of work placed upon the commissioner by §§ 58-3-104 — 58-3-108.

(g) For purposes of this section, "congressional district" means a congressional district established based upon the 1990 federal census.

History.
Acts 1945, ch. 40, § 5; C. Supp. 1950, § 1012.12 (Williams, § 1012.14); impl. am. Acts 1959, ch. 9, § 6; impl. am. Acts 1975, ch. 249, §§ 1-3; Acts 1975, ch. 249, § 6; T.C.A. (orig. ed.), § 7-1008; Acts 2004, ch. 553, §§ 1, 2; 2006, ch. 748, § 1; 2015, ch. 24, § 7.

Compiler's Notes.
For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

58-3-107. Oaths administered by department employees.

The commissioner of veterans services and the assistant commissioners or service officers herein provided shall be authorized to take acknowledgements and administer oaths and affirmations and perform such other notarial acts as may be required in the presentation of claims hereunder, including all affidavits, affirmations and acknowledgements directly or by necessary implication falling within the purview of §§ 58-3-104 — 58-3-108, but not further or otherwise. The commissioner likewise is authorized to designate in writing to be filed with the secretary of state, such additional employees of the department as the commissioner may desire to perform such notarial functions, which writing in case of an employee in the central office shall be filed with the secretary of state, and if in a branch office, shall be filed with the county clerk of the county in which such branch office is located. Any false statement made on oath or affirmation before any of such persons shall subject the offender to punishment for perjury under the penalties now provided by law.

History.
Acts 1945, ch. 40, § 7; C. Supp. 1950, § 1012.13 (Williams, § 1012.16); impl. am. Acts 1959, ch. 9, § 6; impl. am. Acts 1975, ch. 249, §§ 1-3; Acts 1975, ch. 249, § 7; impl. am. Acts 1978, ch. 934, §§ 22, 36; T.C.A. (orig. ed.), § 7-1009; Acts 2015, ch. 24, § 7.

Compiler's Notes.
Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

Cross-References.
Perjury, title 39, ch. 16, part 7.

58-3-108. Acceptance of aid by department.

The department of veterans services is authorized to accept services and facilities from any source, public or private, granted in aid and furtherance of the objectives of the department; provided, that no obligation of the department or the state is incurred thereby.

History.
Acts 1945, ch. 40, § 8; C. Supp. 1950, § 1012.14 (Williams, § 1012.17); impl. am. Acts 1959, ch. 9, § 6; Acts 1975, ch. 249, § 8; T.C.A. (orig. ed.), § 7-1010; Acts 2015, ch. 24, § 7.

Compiler's Notes.

Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

58-3-109. County and municipal service offices.

(a) The county legislative bodies of the several counties of this state and the governing bodies of each municipal corporation in this state are authorized, jointly or severally, to establish service offices for the purpose of advising veterans of the United States armed forces, and their dependents, of all rights, privileges, immunities and benefits to which they may be entitled under any law, state or federal, and which may be made available to them by private institutions, organizations or individuals and of assisting them in every way possible in obtaining such rights, immunities and benefits. The service offices shall be staffed by accredited veterans' service officers.

(b) Such service offices may be established by joint contract of a county and a municipal corporation; of two (2) or more counties or by contract between one (1) or more counties and one (1) or more municipalities or two (2) or more municipalities.

History.

Acts 1945, ch. 38, § 1; C. Supp. 1950, § 1012.15 (Williams, § 1012.18); impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 7-1011; Acts 2004, ch. 664, §§ 1-3.

NOTES TO DECISIONS

Analysis

1. Term of Service Officer.
2. Successor Officer — Right to Salary.

1. Term of Service Officer.

County legislative body could not elect a service officer for period in excess of term of legislative body, hence new legislative body could discharge service officer and appoint a new one. Gillespie v. Rhea County, 191 Tenn. 487, 235 S.W.2d 4, 1950 Tenn. LEXIS 462 (1950).

There is no term of office for veterans' service officers of Tennessee specified herein. Reed v. Hamblen County, 468 F. Supp. 2, 1978 U.S. Dist. LEXIS 13882 (E.D. Tenn. 1978).

2. Successor Officer — Right to Salary.

Where county legislative body discharged veterans' service officer prior to expiration of term and he vacated office and sued for breach of contract, the successor was entitled to recover salary from county for the completion of predecessor's term. State ex rel. Lawson v. Farmer, 189 Tenn. 276, 225 S.W.2d 60, 1949 Tenn. LEXIS 425 (1949).

58-3-110. Appropriations for local service offices.

(a) The several county legislative bodies of the counties of this state and the several governing bodies of incorporated municipalities in this state are authorized to appropriate such funds as may be deemed necessary for the operation of such service offices; provided, however, that where such offices be established by appropriate agreement as hereinabove provided, the necessary funds for the operation thereof may be appropriated by the several political subdivisions participating therein in such proportion as may be agreed upon between themselves.

(b)(1) The senior accredited officer serving in a county veterans' service office may receive compensation commensurate to the compensation paid to

heads of county government departments of comparable size in the county in which the officer is employed. Such compensation may be prorated to reflect the number of hours that the officer actually works during a specific pay period.

(2) Staff personnel employed by the respective veterans' service offices may receive compensation commensurate to the compensation paid to county government employees in comparable positions.

History.
Acts 1945, ch. 38, § 2; C. Supp. 1950, § 1012.16 (Williams, § 1012.19); impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 7-1012; Acts 2004, ch. 664, § 4.

58-3-111. Director of local service office.

(a) A veterans' service officer shall be chosen by the governing body or bodies of the political subdivision or subdivisions creating the veterans' service office by which the officer is to be employed.

(b) If a veterans' service office is created by contract between two (2) or more political subdivisions, the veterans' service officer shall be approved by the governing body of each subdivision participating in the establishment of the office. If the political subdivisions are unable to agree upon a veterans' service officer, then the officer shall be chosen by the commissioner of veterans services from among the candidates proposed by the political subdivisions.

(c) All veterans' service officers shall be honorably discharged veterans of the United States armed forces. Veterans' service officers shall have the authority to administer oaths and to take acknowledgments related to any matter falling within the scope of authority of their office, including the presentation of claims and other functions incident to obtaining benefits for discharged veterans. No veteran or dependent of a veteran shall be charged any fee for services rendered by a veterans' service officer.

(d) All veterans' service officers shall successfully complete training and be issued accreditation by the department of veterans services within one (1) year from the date of appointment. Any veterans' service officer who does not complete the required training and receive accreditation within one (1) year of appointment shall be removed from office by the governing body or bodies of the political subdivisions creating the veterans' service office by which the officer is employed.

History.
Acts 1945, ch. 38, § 3; C. Supp. 1950, § 1012.17 (Williams, § 1012.20); impl. am. Acts 1959, ch. 9, § 6; impl. am. Acts 1975, ch. 249, §§ 2, 3; T.C.A. (orig. ed.), § 7-1013; Acts 1991, ch. 21, § 1; 2004, ch. 664, § 5; 2015, ch. 24, § 7.

Compiler's Notes.
Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

Attorney General Opinions.
To qualify as an "honorably discharged veteran of some war in which the United States has participated," within the meaning of T.C.A. § 58-3-111(c), an individual must have served on active duty in the military, naval, or air service during a period of war as defined under federal law, and the wars that qualify include the Spanish American War, the Mexican border period, World War I, World War II, the Korean conflict (now Korean War), the Vietnam era, and the Persian Gulf War, OAG 02-083 (7/29/02).

NOTES TO DECISIONS

1. Term of Service Officer.
There is no term of office for veterans' service officers of Tennessee specified herein. Reed v. Hamblen County, 468 F. Supp. 2, 1978 U.S. Dist. LEXIS 13882 (E.D. Tenn. 1978).

58-3-112. Free admission to state parks one day a year.

In order to honor the veterans of this state and encourage the use of natural parks across Tennessee, the division of parks and recreation shall designate one (1) day per year during which access to and use of all state parks, including, but not limited to, campgrounds and golf courses, shall be free of charge for all veterans. Each veteran shall be required to show proof of veteran status, which may include, but is not limited to, a DD Form 214 or other comparable certificate of discharge from the armed forces, prior to being granted free admission to any state park.

History.
Acts 2010, ch. 807, § 1.

58-3-113. Tennessee Fallen Heroes Medal.

(a) A Tennessee Fallen Heroes Medal may be awarded on behalf of the people of this state to an individual serving on active duty who has been killed in action, while:

(1) Engaged in an action against an enemy of the United States;

(2) Engaged in military support operations involving conflict with an opposing foreign force;

(3) Serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party; or

(4) Serving in a combat zone as designated by presidential order.

(b) A Tennessee Fallen Heroes Medal may be awarded on behalf of the people of this state to an individual serving on active duty who has been killed in an attack that specifically targets military service members or is carried out by an individual inspired or directed by a foreign terrorist organization.

(c) The recipient's name shall be entered on the medal's case of the Tennessee Fallen Heroes Medal recipient.

(d) Individuals eligible to receive the Tennessee Fallen Heroes Medal include all active duty military who are legal residents of this state or stationed in this state.

(e) The Tennessee Fallen Heroes Medal shall be awarded solely by the governor of this state or the governor's designee to the immediate survivor of the recipient.

History.
Acts 2011, ch. 403, § 1; 2012, ch. 655, § 1; 2016, ch. 581, §§ 1, 2.

Compiler's Notes.
House Joint Resolution 239, effective May 17, 1979, provided: "That there is hereby created the 'Tennessee Distinguished Service Medal' to be awarded to those Tennesseans who give unselfishly of their time and energies in service to their country and state."

CHAPTER 4

WAR RECORDS AND MEMORIALS

Part 1. War Records Bureau

Section
58-4-101. Establishment and duties of bureau.
58-4-102. Personnel — Appropriations.
58-4-103. Request for redaction of social security number from official records.

Part 2. Veterans' Memorials

58-4-201. Appropriations by county legislative bodies.
58-4-202. County monument or building commissioners.
58-4-203. Filing of plans — Accounting for funds.
58-4-204. Appropriation limited to work and material.
58-4-205. Penalty for misappropriation of funds.
58-4-206. Municipal and county memorials.
58-4-207. Cooperation with federal government.
58-4-208. Borrowing power — Bonds.

Part 3. P.O.W.-M.I.A. Recognition

58-4-301. Display of P.O.W.-M.I.A. flag over state capitol.
58-4-302. Donations of P.O.W.-M.I.A. flags.
58-4-303. Display and maintenance of flags.
58-4-304. Hours of display — Flag design.
58-4-305. "Public building" defined.
58-4-306. Welcome centers.

PART 1

WAR RECORDS BUREAU

58-4-101. Establishment and duties of bureau.

There is created in the military department a war records bureau, the duties of which shall be to compile and preserve the records of those Tennesseans who have served their state and nation in time of war, to correlate these records as to rank, organization and branch of service, and to furnish to each county in the state a complete list of the residents of that county participating in such war; provided, however, that it shall be the duty of such war records bureau to furnish to the department of veterans services, upon request of such department and without cost to the latter, any and all records which may be in the possession of the war records bureau.

History.

Acts 1945, ch. 136, § 1; 1947, ch. 86, § 1; C. Supp. 1950, § 1012.6 (Williams, § 1012.8); impl. am. Acts 1959, ch. 9, § 6; impl. am. Acts 1975, ch. 249, § 3; T.C.A. (orig. ed.), § 7-801; Acts 2015, ch. 24, § 7.

Compiler's Notes.

Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

Cross-References.

Records preserved and maintained by historical commission, § 4-11-109.

58-4-102. Personnel — Appropriations.

The adjutant general, with the approval of the governor, shall appoint such necessary personnel as may be needed to enable the war records bureau to function efficiently; the compensation of such personnel, to be fixed by the adjutant general, with the approval of the governor, shall be upon the same scale as paid for comparable services in other departments of the state. For the purpose of enabling the bureau to operate, there is appropriated the sum of twenty-five thousand dollars ($25,000) annually.

History.
Acts 1945, ch. 136, § 2; 1947, ch. 86, § 2; C. Supp. 1950, § 1012.7 (Williams, § 1012.9); T.C.A. (orig. ed.), § 7-802.

Compiler's Notes.
This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

58-4-103. Request for redaction of social security number from official records.

(a) Any veteran of the United States armed forces, or the veteran's surviving spouse, attorney-in-fact, personal representative or court appointed guardian, may request that the war records bureau redact from the official records that are maintained and distributed by the bureau the veteran's social security identification number from those military records if the records are stored in a manner that permits redaction.

(b) The request for redaction of a social security identification number from a military record in the possession of the war records bureau shall be made on a paper writing in a form that is substantially similar to the form that is authorized for use under § 10-7-513. The commissioner of veterans services shall approve a form that meets the requirements of this subsection (b).

(c) The war records bureau has no duty to inquire beyond the acknowledged request to verify the identity or authority of the person requesting the removal. Upon receiving the written request, the war records bureau shall act in accordance with the request to redact the social security identification number from a military record in the possession of the bureau. If redaction is requested and is not practicable, the war records bureau shall verbally or by writing explain to the person making the request why redaction is not practicable.

History.
Acts 2009, ch. 219, § 1; 2015, ch. 24, § 7.

Compiler's Notes.
Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

Cross-References.
Confidentiality of public records, § 10-7-504.

PART 2

VETERANS' MEMORIALS

58-4-201. Appropriations by county legislative bodies.

The county legislative bodies are authorized to appropriate, by a roll call and

recorded vote, from their respective county treasuries, money to be expended solely in the erection of permanent monuments or buildings or libraries or any other evidence of appreciation of the bravery and valor of soldiers, sailors, and marines, within the respective counties appropriating the same, but not from any special fund heretofore provided by law, to the honor and memory of the living and dead American soldiers, sailors, and marines, collectively, who served in World War I, II, or the War Between the States, but it is expressly provided that no sum in excess of thirty thousand dollars ($30,000) shall be appropriated by any one (1) county for such purpose.

History.
Acts 1919, ch. 10, § 1; 1919, ch. 41, § 1; 1925, ch. 28, § 1; Shan. Supp., § 6054a6; Code 1932, § 10243; Acts 1943, ch. 83, § 1; C. Supp. 1950, § 10243; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 7-901.

Cross-References.
Borrowing for erection of memorials by municipalities or counties authorized, § 58-4-208.

State veterans' cemeteries, title 46, ch. 6.

Textbooks.
Tennessee Jurisprudence, 19 Tenn. Juris., Municipal, State and County Securities, § 7.

58-4-202. County monument or building commissioners.

When any county makes any such appropriation, the county legislative body making it shall elect five (5) reputable citizens of the respective county, over eighteen (18) years of age, who shall be known as the county monument or building commissioners, who shall be duly sworn faithfully to discharge their duties as such, and whose duty it shall be to superintend the erection of the monument or building under the general orders and direction of the legislative body; and it is expressly provided that such commissioners shall, when the monument or building has been completed and delivered, forthwith make a full and complete detailed report in writing to the county legislative body in open session, which shall be spread of record in the legislative body, accounting definitely and with detailed particulars for every dollar coming into their hands.

History.
Acts 1919, ch. 10, § 3; 1919, ch. 41, § 3; Shan. Supp., § 6054a8; Code 1932, § 10245; impl. am. Acts 1971, ch. 162, § 3; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 7-902.

58-4-203. Filing of plans — Accounting for funds.

Before any part of any such appropriation shall be paid out of any county treasury, there shall first be filed with the county trustee of the county making the appropriation, plans and specifications of the proposed monument or building or library or other evidence of appreciation, with a detailed estimate of every cost and expense of the same; and it is further provided as an absolute prerequisite to the paying out of any part of any such appropriation that the persons receiving the appropriation, or any part thereof, shall give the trustee detailed vouchers approved by county monument or building commissioners and the county mayor in open court and personally receipted in writing by the payees and duly entered of record in detail in the books of the county clerk, in

such manner and form as to clearly and definitely show for what purpose the money was paid and to whom, etc.

History.
Acts 1919, ch. 10, § 2; 1919, ch. 41, § 2; Shan. Supp., § 6054a7; Code 1932, § 10244; impl. am. Acts 1978, ch. 934, §§ 16, 22, 36; T.C.A. (orig. ed.), § 7-903; Acts 2003, ch. 90, § 2.

Compiler's Notes.
Acts 2003, ch. 90, § 2, directed the code commission to change all references from "county executive" to "county mayor" and to include all such changes in supplements and replacement volumes for the Tennessee Code Annotated.

58-4-204. Appropriation limited to work and material.

No part of any such appropriation shall be expended for land, fees, or salaries, but shall all be used for the erection of the monument or building, and all such money shall be alone for work on and material entering into the construction of the monument or building.

History.
Acts 1919, ch. 10, § 4; 1919, ch. 41, § 4; Shan. Supp., § 6054a9; Code 1932, § 10246; T.C.A. (orig. ed.), § 7-904.

58-4-205. Penalty for misappropriation of funds.

Any and all persons accepting the custody or control of any part of any such appropriation provided for, who misappropriates or aids in the misappropriation or willful diversion of any part of the same is guilty of a Class E felony, which penalty may be commuted to six (6) months in the workhouse in the discretion of the court, and shall be fined fifty dollars ($50.00) which, when collected, shall be paid into the county school fund.

History.
Acts 1919, ch. 10, § 5; 1919, ch. 41, § 5; Shan. Supp., § 6054a10; Code 1932, § 10247; T.C.A. (orig. ed.), § 7-905; Acts 1989, ch. 591, § 76.

Cross-References.
Penalty for Class E felony, § 40-35-111.

58-4-206. Municipal and county memorials.

Each municipality and county of the state is authorized and empowered to erect suitable public memorials and to contract for the erection of such memorials to the services of the members of the armed forces and veterans of the various wars in which Tennesseans have fought. The memorials selected shall be in the form of any public improvement approved as hereinafter provided by the governing body of such municipality or county and may include public buildings, hospitals, schools and auditoriums (but such enumeration shall not limit the discretion of such governing body of the municipality or county in its selection of appropriate memorials).

History.
Acts 1945, ch. 131, § 1; C. Supp. 1950, § 1012.18 (Williams, § 1012.21); T.C.A. (orig. ed.), § 7-906.

Textbooks.
Tennessee Jurisprudence, 18 Tenn. Juris., Military, § 10.

58-4-207. Cooperation with federal government.

Each municipality and county of the state acting under §§ 58-4-206 — 58-4-208 is expressly authorized to cooperate with the federal government or any other governmental agencies in the planning, erecting and financing of any memorial hereunder, and is authorized to receive from such governmental agencies, pursuant to any plan of cooperation with such governmental agencies gifts, bounties or grants-in-aid of any character to supplement or entirely finance the cost of any project undertaken pursuant to §§ 58-4-206 — 58-4-208.

History.
Acts 1945, ch. 131, § 2; C. Supp. 1950, § 1012.19 (Williams, § 1012.22); T.C.A. (orig. ed.), § 7-907.

58-4-208. Borrowing power — Bonds.

Each municipality and county of the state, acting by and through its governing body, is authorized to borrow money and to issue and sell bonds of such municipality or county pursuant to title 9, chapter 21 for the purpose of providing the funds necessary to carry out the purposes of §§ 58-4-206 — 58-4-208.

History.
Acts 1945, ch. 131, § 3; C. Supp. 1950, § 1012.20 (Williams, § 1012.23); T.C.A. (orig. ed.), § 7-908; Acts 1988, ch. 750, § 65.

PART 3

P.O.W.-M.I.A. RECOGNITION

58-4-301. Display of P.O.W.-M.I.A. flag over state capitol.

(a)(1) On days that neither house of the general assembly is in session during the month of September, the P.O.W.-M.I.A. flag must be displayed over the state capitol in accordance with § 4-1-406(a), on any day the United States flag is displayed, in order to increase public awareness of the P.O.W.-M.I.A. issue and to gain public support for the efforts of the United States government to resolve this matter.

(2) Beginning June 30, 2017, the P.O.W.-M.I.A. flag must be displayed daily below the United States flag in War Memorial Plaza and in Vietnam Veterans Park.

(b) In addition to the requirements of subsection (a), the P.O.W.-M.I.A. flag may be displayed over the state capitol, in accordance with § 4-1-406(a), on any day the United States flag is displayed over the state capitol.

History.
Acts 1994, ch. 713, § 1; 2006, ch. 857, § 1; 2011, ch. 238, § 1; 2017, ch. 437, § 1.

Cross-References.
P.O.W.-M.I.A. Recognition Week, § 15-2-107.

58-4-302. Donations of P.O.W.-M.I.A. flags.

(a) Any individual or group may donate a P.O.W.-M.I.A. flag to a county, municipal or state government for the display of the flag pursuant to this part.

(b) In addition to the display of the flag over the state capitol pursuant to § 58-4-301(b), the P.O.W.-M.I.A. flag may be displayed by a county or municipal government at the following buildings on any day the United States flag is displayed:

(1) The courthouse or other building that serves as the main administrative building of the county; or

(2) The building that serves as the city or town hall or main administrative building of the municipality.

(c) If the flag is displayed, it shall be displayed in accordance with § 4-1-406(a).

History.
Acts 1994, ch. 713, § 1; 2011, ch. 238, § 2.

58-4-303. Display and maintenance of flags.

If a P.O.W.-M.I.A. flag is donated for display to and is displayed by the state, county or municipal government in accordance with this part, it shall be raised and lowered at the same time, and maintained in the same manner, as the state and United States flags. The county, city, or state government will utilize current flag poles and halyard to display the P.O.W.-M.I.A. flag.

History.
Acts 1994, ch. 713, § 1; 2011, ch. 238, § 3.

58-4-304. Hours of display — Flag design.

The P.O.W.-M.I.A. flag, which depicts a prisoner's profile against the background of a P.O.W. watchtower, if displayed, shall be displayed in accordance with this part during normal business hours.

History.
Acts 1994, ch. 713, § 1; 2011, ch. 238, § 4.

58-4-305. "Public building" defined.

For purposes of this part, "public building" is defined according to § 68-120-203.

History.
Acts 1994, ch. 713, § 1.

58-4-306. Welcome centers.

The P.O.W.-M.I.A. flag, as described in § 58-4-304, may be displayed at each welcome center operated by the department of tourist development, and, if so displayed, shall be third in order on the flagpole after the flag of the United States of America and the Tennessee state flag. When the P.O.W.-M.I.A. flag is so displayed, it shall be displayed during the same hours and maintained in the same manner as the flag of the United States of America and the Tennessee state flag are displayed and maintained at the respective welcome centers operated by the department of tourist development, notwithstanding § 58-4-304 to the contrary. Flags displayed pursuant to this section shall be donated

in accordance with § 58-4-302 and no state funds shall be expended to purchase the flags.

History.
Acts 2006, ch. 857, § 2.

CHAPTERS 5, 6 [RESERVED]

CHAPTER 7

STATE VETERANS' HOMES

Section
58-7-101. Establishment — Purpose — Funding requirements.
58-7-102. State veterans' homes board.
58-7-103. Powers and duties of board.
58-7-104. Creation of executive committee — Duties.
58-7-105. Reimbursement of board members.
58-7-106. Conflicts of interest.
58-7-107. Incurrence of debt.
58-7-108. Disposition of funds.
58-7-109. Annual report.
58-7-110. Plan of operation.
58-7-111. Annual audit.
58-7-112. Application for federal grant — Other preparatory actions.
58-7-113. Bed occupancy.
58-7-114. Death of resident — Notice to guardian or next of kin — Disposition of personal property.

58-7-101. Establishment — Purpose — Funding requirements.

(a) There shall be public homes for veterans in Tennessee known as "Tennessee state veterans' homes."

(b) The primary purpose of the homes shall be to provide support and care for honorably discharged veterans who served in the United States armed forces.

(c) These homes shall be established and operated only if federal veterans' administration funds are available to meet a substantial part of any construction costs incurred in the establishment of such homes.

(d) Additionally, each state veterans' home established pursuant to this chapter must be eligible for and receive the veterans' administration per diem payments available to qualified residents in accordance with applicable federal regulations.

History.
Acts 1988, ch. 899, § 1.

Law Reviews.
Suddenly Discharged the Combat Continues: Eliminating the Legal Services Gap to Ensure Veterans' Success After Leaving Military Service, 45 U. Mem. L. Rev. 837 (2015).

The Credibility Trap: Notes on a VA Evidentiary Standard, 45 U. Mem. L. Rev. 887 (2015).

58-7-102. State veterans' homes board.

(a)(1) There is hereby created a body, politic and corporate, to be known as the "Tennessee state veterans' homes board."

(2) The board, a political subdivision and instrumentality of the state,

shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions and shall be deemed to be serving a public purpose and improving and otherwise promoting their health, welfare, and prosperity.

(b) The board shall consist of thirteen (13) members. The commissioner of veterans services and the commissioner of finance and administration shall be ex officio, voting members of the board. A commissioner may designate a staff member to attend meetings of the board or its committees and to exercise the commissioner's right to vote in the commissioner's absence. The designation shall be made in writing to the chair of the board. The remaining eleven (11) members shall be appointed by the governor. At least three (3) members shall be appointed from each of the three (3) grand divisions of the state. All appointments shall be subject to review by the joint select committee on veterans' affairs of the general assembly. Initial appointments to the board shall be for one (1), two (2) and three (3) years, respectively. Thereafter, all appointed members shall serve three-year terms. Each member must be a citizen of the state. One (1) member shall be a nursing home administrator at the time of the member's appointment and shall be experienced in the financial operations of nursing homes. One (1) member shall have clinical experience in nursing homes. The remaining members shall be honorably discharged veterans of the United States armed forces. Veteran members shall be appointed from nationally chartered service organizations that have departments in this state. The board shall be composed of members representing different organizations as well as different branches of the armed forces.

(c) Appointed members of the board may be removed for cause by the governor.

(d) Vacancies occurring in an office of a member of the board before the expiration of a term by reason of death, resignation, or any other reason shall be filled by the governor in the same manner as a regular appointment for the remainder of the unexpired term.

History.

Acts 1988, ch. 899, § 2; 2008, ch. 1137, §§ 1, 2; 2015, ch. 24, § 7.

Compiler's Notes.

The Tennessee state veterans' home board, created by this section, terminates June 30, 2019. See §§ 4-29-112, 4-29-240.

Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

Cross-References.

Grand divisions, title 4, ch. 1, part 2.

58-7-103. Powers and duties of board.

(a) The board shall elect a chair from among its members. The chair shall be a citizen of the state and an honorably discharged veteran of the United States armed forces. The chair shall serve a one-year term. A chair may be reelected; provided, that no person shall serve as chair for more than two (2) consecutive terms.

(b) The board shall also select other officers as the board finds necessary and appropriate. The positions are for a period of one (1) year, but members may be

reelected to serve additional terms; provided, that no person shall serve for more than two (2) consecutive terms.

(c) The board, pursuant to applicable state and federal law, is hereby vested and charged with those powers and duties necessary and proper to enable it to fully and effectively carry out this chapter, including, but not limited to:

(1) The authority to determine the location of the Tennessee state veterans' homes. In selecting the sites, preference shall be given to publicly owned land. Land for the sites may be purchased only if suitable publicly owned land is not available;

(2) The duty to adopt written policies and procedures to govern its internal operations;

(3) The authority to acquire, in the name of the board, real or personal property or any interest therein, including rights or easements, on either a temporary or long-term basis by gift, purchase, transfer, foreclosure, lease or otherwise;

(4) The authority to hold, sell, assign, lease, rent, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or mortgage interest owned by it or in its control, custody or possession and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including threat of foreclosure;

(5) The authority to incur debts, to borrow money, to issue debt instruments and to provide for the rights of the holders thereof;

(6) The authority to procure insurance against any loss in connection with its property and other assets in amounts and from insurers which it deems desirable;

(7) The authority to have employees authorized by the Tennessee state veterans' homes board solicit and receive bequests and donations for:

(A) The improvement of the general comfort and welfare of the members of the home or homes; or

(B) The future construction of a new home or homes;

(8) The authority to seek advice from the United Tennessee Veterans' Association (UTVA);

(9) The authority to seek assistance from the commissioner of finance and administration, the comptroller of the treasury, the state treasurer, and other state agencies;

(10) Do other acts necessary or convenient to exercise the powers granted or reasonably implied in this section;

(11) The authority to provide guidance to future administrators at state veterans' nursing homes based upon the collective institutional memory of the state veterans' homes board; and

(12) The authority to notify members of the general assembly and appropriate persons in the executive branch of potential problems in state veterans' nursing homes.

History.
Acts 1988, ch. 899, § 3; 2008, ch. 1137, §§ 3, 4; 2016, ch. 856, § 1.

58-7-104. Creation of executive committee — Duties.

(a) There is created an executive committee of the board. The executive committee shall be composed of three (3) members of the board. One (1) member shall be the commissioner of finance and administration. The remaining two (2) members shall be elected by the board subject to the qualifications that one (1) member shall be either a nursing home administrator at the time of the member's appointment or someone who has clinical experience in nursing homes, and one (1) member who shall be the chair of the board.

(b) The executive committee shall be responsible for the oversight of the day-to-day management and operation of state veterans' homes, including, but not limited to:

(1) The authority to employ an executive director and other employees and to incur expenses as may be necessary for the proper discharge of its duties;

(2) The authority to establish policies regarding the rates for patient care while in a state veterans' home; and

(3) The authority to make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter, including contracts for the operation of the state veterans' homes. All contracts that pertain to the acquisition and improvement of real property pursuant to § 4-15-102 must be approved in advance by the building commission and must be approved by the board. Contracts for services must also be approved in advance pursuant to former § 12-4-109 [repealed].

(c) The executive director shall be appointed by the executive committee subject to review by the full board. The compensation of the executive director shall be established by the executive committee. The executive director shall be subject to an annual review and shall serve at the pleasure of the executive committee.

(d) The executive committee shall file a quarterly report with the fiscal review committee concerning the operations of each state veterans' nursing home. The report shall be filed within fifteen (15) business days following the end of each calendar quarter and include information for the three-month period. The report shall include detailed information concerning the extent to which each state veterans' nursing home is in compliance with state and federal law, as well as all actions taken by the executive committee to ensure compliance with the requirements of this chapter. The report shall also include any specific information requested by the chair of the fiscal review committee.

History.

Acts 1988, ch. 899, § 4; 2008, ch. 1137, § 5.

Compiler's Notes.

Former § 12-4-109, referred to in this section, was part of a repeal and reenactment by Acts 2013, ch. 403, effective July 1, 2013. No provisions in Acts 2013, ch. 403 are comparable to the former provisions of § 12-4-109; therefore, § 12-4-109 appears to be repealed.

58-7-105. Reimbursement of board members.

Members of the board shall not be compensated for services rendered to the homes, but will be compensated for necessary expenses incurred by a member

in the performance of the member's official duties. All reimbursement for travel expenses shall be in accordance with the policies and guidelines approved by the board, but shall not exceed the maximum reimbursement for travel expenses allowed by the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 1988, ch. 899, § 5.

58-7-106. Conflicts of interest.

If any matter before the board involves a project, transaction, or relationship in which a member or the member's associated institution, business or board has a direct or a conflicting interest, the member shall make known to the board that interest and shall be prohibited from participating in discussions and voting on that matter.

History.
Acts 1988, ch. 899, § 6.

58-7-107. Incurrence of debt.

(a) Prior to the adoption of any resolution or other action of the veterans' homes board authorizing the incurrence of debt or the borrowing of funds or entering into any contract or other arrangement for the planning or preparation for the incurrence of debt or the borrowing of funds, the veterans' homes board shall review such plans with the office of the comptroller of the treasury or the comptroller's designee.

(b) The state funding board is authorized to contract or to make other arrangements as it may deem necessary to provide for the issuance of such debt of the veterans' homes board, or in the state funding board's discretion, the veterans' homes board may enter into such contracts or other arrangements; provided, however, that any contract or arrangement entered into for the purpose of the issuance or incurrence of debt shall be subject to the approval of the state funding board.

(c) Any resolution or other action of the veterans' homes board authorizing the issuance or incurrence of debt shall be submitted to the state funding board, and such resolution or other action shall only become effective upon receiving the approval of the state funding board.

(d) Any instrument or document evidencing the debt or borrowing of funds by the veterans' homes board shall contain on the face thereof a statement to the effect that the debt or obligation is not a debt of the state, but is payable solely from revenues and moneys pledged to the payment thereof.

History.
Acts 1988, ch. 899, § 7; 2010, ch. 868, § 82.

58-7-108. Disposition of funds.

The administrator of each home shall deposit with the state treasurer funds paid by veterans for their maintenance, funds received from the United States

treasury and other funds given or granted to the home, including state funds. Such funds may be invested in the local government investment pool pursuant to title 9, chapter 4, part 7. The board is authorized to accept funds from any source whatever, including the federal government or any department or board thereof. All such funds received by the board for such state veterans' homes, including funds from the United States government or any federal board or program for the support of persons housed on the grounds of state veterans' homes, shall be used by the board to pay maintenance, operational and administrative expenses, and to further the objectives and purposes of the state veterans' homes. The board may establish such bank accounts pursuant to § 9-4-302 as are necessary for the efficient management of the homes.

History.
Acts 1988, ch. 899, § 8.

58-7-109. Annual report.

The board shall make an annual report to the governor and to members of the government operations committees of the senate and the house of representatives and the joint select committee on veterans' affairs. This report shall contain an accounting of all money received and expended, statistics on members who resided in the home during the year, recommendations to improve state veterans' homes and such other matters as the board deems pertinent.

History.
Acts 1988, ch. 899, § 9; 2008, ch. 1137, § 6.

58-7-110. Plan of operation.

At least thirty (30) days prior to the beginning of each fiscal year, the board shall submit a plan of operation for review and approval to the commissioner of veterans services, the commissioner of finance and administration and the comptroller of the treasury. The plan of operation shall be in such form as may be required by the state officials enumerated in this section and shall include, but not be limited to, a budget for operating and capital expenditures and appropriate policies and procedures adopted by the board to govern the expenditure of these funds. The plan of operation may be amended during a fiscal year with the written approval of the commissioner of veterans services, the commissioner of finance and administration and the comptroller of the treasury.

History.
Acts 1988, ch. 899, § 10; 2015, ch. 24, § 7.

Compiler's Notes.
Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

58-7-111. Annual audit.

The comptroller of the treasury shall make an annual audit of the program

established by this chapter as part of the comptroller's annual audit pursuant to § 9-3-211.

History.
Acts 1988, ch. 899, § 11.

58-7-112. Application for federal grant — Other preparatory actions.

It is the intention of the general assembly that, in establishing state veterans' homes, the state shall apply for a grant from the United States veterans' administration and/or obtain its approval for leasing existing facilities pursuant to Public Law 95-62 (38 U.S.C. §§ 5031-5037). The department of veterans services is hereby authorized to submit such an application or applications on behalf of the board and take other preparatory actions to identify existing facilities for lease or purchase and process the necessary requests for proposals to a point so that contract negotiations could begin with the board when it is established.

History.
Acts 1988, ch. 899, § 12; 2015, ch. 24, § 7.

Compiler's Notes.
Acts 2015, ch. 24, § 7 provided that the Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.

58-7-113. Bed occupancy.

(a) Twenty-five percent (25%) of the bed occupants at any one (1) time of state veterans' homes authorized by this part may be veteran-related family members, i.e. spouses, surviving spouses, gold star parents and dependent children.

(b) When a state veterans' home accepts grant assistance for a construction project, seventy-five percent (75%) of the bed occupants at that facility as a whole must be veterans.

History.
Acts 1989, ch. 17, § 2.

Compiler's Notes.
Acts 1989, ch. 17, § 3 provided that the provisions of this section are retroactive and apply to any Tennessee veterans' home established prior to March 22, 1989, pursuant to this chapter.

Cross-References.
Health care facilities' certificates of need, § 68-11-1621.

Attorney General Opinions.
Constitutionality, OAG 89-33 (3/10/89).

58-7-114. Death of resident — Notice to guardian or next of kin — Disposition of personal property.

(a) Upon the death of a resident of a Tennessee state veterans' home, the administrator of the home shall promptly give notice of such death to the guardian or next of kin of such resident.

(b) The administrator, executor or personal representative of the deceased person, or if there be none, one (1) or more of the heirs at law or next of kin, shall be notified by registered mail of any personal property owned by the

deceased and left at the home at the time of the resident's death. Notice of an administrator, executor or personal representative shall be directed to the probate court of the county wherein the administrator, executor or personal representative is qualified to administer the estate of the deceased. Notice to the next of kin or heirs at law shall be addressed to the last known address of such person or persons.

(c) The administrator of the home shall thereafter keep such personal property for twelve (12) months following the date of such notice or notices, at the expiration of which time, if it has not been claimed, the administrator shall sell or otherwise dispose of the property, with the approval of the state veterans' home foundation, incorporated, and deposit the proceeds from such sale or disposition in a fund, maintained under the supervision of the administrator for the purpose of providing needy patients or residents in the institution with comforts and necessities they are unable to provide for themselves.

(d) If, after diligent search and inquiry, the name of none of the persons required to be notified in subsection (b) can be ascertained so that the required notice cannot be given, or the persons notified do not open the estate or otherwise proceed to dispose of the estate in a lawful manner, any property owned and left by any deceased resident in the home shall be kept for twelve (12) months after the death of the resident and if unclaimed, be disposed of as provided in subsection (c).

(e) When any resident otherwise leaves the home, and leaves any personal property in the home, the administrator shall promptly notify such former resident by registered mail addressed to the resident's last known address of the fact that property belonging to the resident has been left at the home. Such property shall be kept for twelve (12) months from the date of the notice and if not claimed at the expiration of that time, disposed of as provided in subsection (c).

History.
Acts 1993, ch. 302, § 1.

Cross-References.
Certified mail in lieu of registered mail, § 1-3-111.

CHAPTER 8

MUTUAL AID AND EMERGENCY AND DISASTER ASSISTANCE AGREEMENT ACT OF 2004

Section

58-8-101. Short title.
58-8-102. Chapter definitions.
58-8-103. Governance — Agreements to provide aid and assistance — Service and operational agreements — Purpose — Construction with other laws.
58-8-104. Declaration of local state of emergency — Cost reimbursement — Evacuation orders.
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Section
58-8-108. Command of the scene — Delegation of command.
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58-8-110. Immunity.
58-8-111. Responsibility for costs — Eligibility for reimbursement — Wages — Use of equipment, materials and supplies — Records and invoices.
58-8-112. Existing mutual aid agreements.
58-8-113. Authority to provide aid or assistance in any area of the state.
58-8-114. Recognition and enforcement of laws regarding tort liability.
58-8-115. Reimbursement of eligible costs to governmental utility system.

58-8-101. Short title.

This chapter shall be known and may be cited as the "Mutual Aid and Emergency and Disaster Assistance Agreement Act of 2004."

History.
Acts 2004, ch. 743, § 1.

58-8-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Activities under service agreements" means day-to-day cooperation and activities based upon interlocal service or operational agreements or contracts between or among governmental entities;

(2) "Aid" means the same as assistance, except that aid is provided in an occurrence during any period of time when a state of emergency has not been declared;

(3) "Assistance" means the provision of personnel, equipment, facilities, services, supplies, and other resources to assist in firefighting, law enforcement, the provision of public works services, the provision of emergency medical care, the provision of civil defense services, or any other emergency assistance one governmental entity is able to provide to another in response to a request for assistance in a municipal, county, state, or federal state of emergency;

(4) "Disaster" means any natural, technological, or civil emergency that results in substantial injury or harm to the population or substantial damage to or loss of property of sufficient severity and magnitude that there is a declaration, resulting from the emergency, of a disaster by the governor under state law or the president under federal law;

(5) "Emergency" means an occurrence or threat of an occurrence, whether natural or man-made, that results in or may result in substantial injury or harm to the population or substantial damage to or loss of property and which results in a declaration of a state of emergency by a municipal mayor, a county mayor or executive, the governor, or the president;

(6) "Emergency assistance" means assistance provided by a participating governmental entity to another under this chapter;

(7) "Employee" means paid, volunteer, and auxiliary personnel and emergency management workers of a governmental entity;

(8) "Governmental entity" means any political subdivision of the state, including, but not limited to, any incorporated city or town, metropolitan government, county, utility district, school district, nonprofit volunteer fire

department receiving public funds and recognized under title 68, chapter 102, part 3, rescue squad, human resource agency, public building authority, airport authority, and development district, or any instrumentality of government created by one (1) or more of these named governmental entities or the general assembly, or any entity otherwise recognized by state law as a local governmental entity;

(9) "Occurrence" means the imminent threat of an event or an actual event and its aftermath, whether natural or man-made, that could lead to substantial bodily injury or property damage and that could lead to the declaration of a state of emergency;

(10) "Participating governmental entity" means any governmental entity in the state that requests or responds to a request for aid or assistance under this chapter;

(11) "Responding party" means a governmental entity that has received and responded to a request to provide mutual aid or assistance to another governmental entity under this chapter; and

(12) "Requesting party" means a governmental entity that requests aid or assistance from another governmental entity under this chapter.

History.
Acts 2004, ch. 743, § 1.

58-8-103. Governance — Agreements to provide aid and assistance — Service and operational agreements — Purpose — Construction with other laws.

(a) On and after July 1, 2004, the provision and receipt of mutual aid and assistance by participating governmental entities shall be governed by this chapter, and no separate agreement is necessary except with regard to aid or assistance provided to entities in other states, aid or assistance provided between nongovernmental utilities and governmental entities, and governmental entities that decide to provide aid and assistance under a separate agreement. Governmental entities may choose by resolution of their governing bodies to continue agreements existing on July 1, 2004, until they expire or are terminated in accordance with their terms. Governmental entities may also by resolution extend existing agreements or make new agreements relative to mutual aid and assistance after July 1, 2004. When there is an agreement between or among governmental entities, the provisions of that agreement and applicable authorizing law govern activities under the agreement. For any governmental entity with no agreement with the particular requesting party governing mutual aid or assistance, this chapter applies to both parties.

(b) It is not the intent of this chapter to affect activities under service agreements. Service and operational agreements may continue to be made and enforced under §§ 5-1-113, 5-1-114, 5-16-107, 5-19-106, 6-54-307, 6-54-601, title 12, chapter 9, title 49, chapter 2, part 13, or other applicable law.

(c) The purposes of this chapter are to authorize mutual aid and to enhance public safety and homeland security by facilitating assistance among governmental entities in any state of emergency or declared disaster while conforming to federal guidelines relative to reimbursement of costs for assistance rendered.

(d) Aid and assistance to entities in other states continues to be governed by the Interlocal Cooperation Act, compiled in title 12, chapter 9, and other applicable law.

History.
Acts 2004, ch. 743, § 1; 2009, ch. 388, § 2.

58-8-104. Declaration of local state of emergency — Cost reimbursement — Evacuation orders.

(a) The mayor of a municipality or the mayor or county executive of a county or metropolitan government may declare a local state of emergency affecting such official's jurisdiction by executive order consistent with and governed by § 58-2-110(3)(A)(v).

(b) The mayor or executive of any municipality or county, or such official's designee, may declare a state of emergency for such official's municipality or county regardless of whether the event in question affects only that jurisdiction or multiple jurisdictions.

(c) The declaration of a state of emergency by a jurisdiction entitles the responding party or parties to cost reimbursement as provided in § 58-8-111. The requesting party is required to make this reimbursement to the responding party or parties.

(d) The municipal mayor or county mayor or executive may declare the state of emergency at any time during the imminent pendency or happening of the occurrence.

(e) If a county mayor or the executive of a county declares a local state of emergency in accordance with subsection (a), the county mayor or the executive of the county may, in the interest of public health, safety, and welfare, issue orders to direct and compel the evacuation of the entire unincorporated area of the county or any portion thereof.

(f) If a mayor or the executive of a municipality or metropolitan government declares a local state of emergency in accordance with subsection (a), the mayor or the executive of the municipality or metropolitan government may, in the interest of public health, safety, and welfare, issue orders to direct and compel the evacuation of the entire incorporated area of the municipality or metropolitan government, or any portion thereof.

(g) A person who willfully violates an order issued under subsection (e) or (f) commits a Class C misdemeanor.

History.
Acts 2004, ch. 743, § 1; 2018, ch. 868, § 1.

Amendments.
The 2018 amendment added (e) through (g).

Effective Dates.
Acts 2018, ch. 868, § 2. May 3, 2018.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

58-8-105. Request for aid and assistance — Confirmation — Request for mutual aid for emergency medical services.

(a) When a governmental entity is affected by an occurrence that its

resources will not be adequate to handle, the governmental entity may request aid through the appropriate emergency management employee or official, or a county or municipality may declare a local state of emergency as provided in § 58-8-104 and request assistance by communicating the request to a potential responding party or multiple potential responding parties. Requests for aid or for assistance must be made by the appropriate official or employee to the emergency communications dispatch center of potential responding parties or other officials authorized by the potentially responding party to respond to requests under this chapter.

(b) Each request for aid or assistance may be made verbally and should, to the extent possible, include the following:

(1) A statement that an occurrence is imminent, in progress, or has occurred. The statement should also indicate whether a declaration of a state of emergency has been made and give a general description of the occurrence or emergency, including an initial estimate of the damages and injuries sustained or expected;

(2) Identification of the service functions for which aid or assistance is needed and the particular type of aid or assistance needed;

(3) The amount of personnel, equipment, materials, and supplies needed; and

(4) An estimated time and place for a representative of the requesting party to meet the responding party.

(c) Each request for aid or assistance may include the following if known or necessary:

(1) An estimate of the amount of time, aid, or assistance that will be needed.

(2) Identification of the types of infrastructure for which aid or assistance is needed, e.g., water and sewer, streets, gas, electric, or other infrastructure; and

(3) Identification of the need for sites, structures, or other facilities outside the requesting party's jurisdiction to serve as relief centers or staging areas for incoming emergency goods or services.

(d) All requests for assistance shall be confirmed in writing to the responding party or parties within thirty (30) days of the initial request. Parties shall keep records of all requests made for assistance under this chapter.

(e) In addition to any agreement for mutual aid made under title 5 or title 12, a governmental entity is authorized to request mutual aid for emergency medical services provided under title 68, chapter 140, from the emergency communications dispatch center of a county that is contiguous to the requesting county or governmental entity for occurrences that involve serious injuries or possible loss of life in instances that might not reasonably lead to a declared emergency.

History.
Acts 2004, ch. 743, § 1; 2012, ch. 906, § 1.

58-8-106. Sending personnel and equipment outside jurisdiction.

Any participating governmental entity may, upon receiving a request for

mutual aid in an occurrence or for assistance from a requesting party in a municipal, county, state, or federal state of emergency, send its personnel and equipment outside its boundaries and into any other jurisdiction necessary to respond to the request.

History.
Acts 2004, ch. 743, § 1.

58-8-107. Discretion of participating entities to respond — Withdrawal of aid or assistance — Mutual aid for emergency medical services.

(a) This chapter does not create a duty on participating governmental entities to respond to a request for aid or assistance nor to stay at the scene of an occurrence or emergency for any length of time. Upon receipt of a request for aid or assistance, a potential responding party shall determine whether and to what extent it will provide the aid or assistance. If the potential responding party determines in its complete discretion that it is not in its best interest to provide aid or assistance, it shall notify the requesting party of its decision as soon as possible. If the potential responding party determines that aid or assistance can be provided, it shall communicate the following information to the requesting party as soon as possible:

(1) A description of what personnel, equipment, and other resources it will provide;

(2) An estimate of the length of time aid or assistance will be available; and

(3) An estimated time of arrival at the scene or designated meeting place.

(b) The responding party may withdraw aid or assistance at any time. The responding party shall notify the requesting party as soon as possible of any decision to withdraw aid or assistance.

(c) The provisions of this section that require certain actions are directory rather than mandatory and do not create a public or special duty on the part of any participating governmental entity.

(d) In addition to any agreement for mutual aid made under title 5 or title 12, a governmental entity is authorized to respond to a request for mutual aid for emergency medical services under § 58-8-105(e) from a county that is contiguous to the requesting county or governmental entity for occurrences that involve serious injuries or possible loss of life in instances that might not reasonably lead to a declared emergency. A county is authorized to enter into a mutual aid agreement under title 12 to permit routine and automatic approval of and response to such requests.

History.
Acts 2004, ch. 743, § 1; 2012, ch. 906, § 2.

58-8-108. Command of the scene — Delegation of command.

The representative or representatives of the requesting party authorized to be in charge of emergency response at the scene shall be in command at the scene as to strategy, tactics, and overall direction of the operations. The

requesting party may delegate command as needed. Generally accepted incident command procedures shall be implemented and followed. The responding party shall designate supervisory personnel for its employees sent to render aid or assistance. All orders or directions regarding the operations of the responding party shall be relayed to the responding party through these designated supervisory personnel unless a different arrangement is determined by the parties in the field to be more advantageous.

History.
Acts 2004, ch. 743, § 1.

58-8-109. Scope of authority — Workers' compensation coverage — Liability.

(a) When employees of the responding party are sent from the employing jurisdiction to another jurisdiction or jurisdictions in response to a request for aid or assistance under this chapter, they have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the jurisdiction in which they normally function.

(b) Employees of the responding party will be considered as the responding party's employees at all times while performing their duties under this chapter for purposes of the workers' compensation law and for that purpose will be considered as acting within the course and scope of their employment with the responding party.

(c) Under § 29-20-107(f), for liability purposes only, employees of the responding party are to be considered employees of the requesting party while performing their duties under this chapter at the scene of the occurrence or emergency or other locations necessary for the response while under the supervision of the requesting party. At all other times in the response, including traveling to the scene and returning to the employing jurisdiction, such employees are to be considered for liability purposes to be employees of the responding party.

History.
Acts 2004, ch. 743, § 1.

58-8-110. Immunity.

Nothing in this chapter shall be construed to remove any immunity from, defenses to, or limitation on liability provided by the Tennessee Governmental Tort Liability Act, compiled in title 29, chapter 20, or other law.

History.
Acts 2004, ch. 743, § 1.

58-8-111. Responsibility for costs — Eligibility for reimbursement — Wages — Use of equipment, materials and supplies — Records and invoices.

(a) Except as provided in this section, the requesting party shall pay the responding party all documented costs incurred by the responding party in extending assistance to the requesting party under this chapter. The request-

ing party is ultimately responsible for reimbursement of all eligible expenses, not to exceed the federal emergency management agency's (FEMA) reimbursement fee schedules.

(b) Eligibility for reimbursement begins immediately upon the declaration of the state of emergency. The responding party is entitled to receive payment for one-half (½) its reimbursable costs for the first six (6) hours of its response after the state of emergency is declared. The responding party is entitled to one hundred percent (100%) reimbursement of eligible costs incurred after six (6) hours are exceeded. Time periods for the response subject to reimbursement shall be calculated from the time the state of emergency is declared or the time the responding party leaves its jurisdiction, whichever occurs later, to the time it returns. Reimbursement of personnel, equipment, and materials and supply costs are all subject to the limitations of this subsection (b).

(c) During the period of assistance, the responding party shall continue to pay its employees according to then-prevailing wages, including benefits and overtime. The requesting party shall reimburse the responding party for all direct and indirect payroll costs, including travel expenses, incurred during the period of assistance, including but not limited to, employee retirement benefits as determined by generally accepted accounting principles. The requesting party is not responsible for reimbursing any amounts paid or due as benefits to responding party's personnel under the terms of the Tennessee Workers' Compensation Act, compiled in title 50, chapter 6.

(d) The requesting party shall reimburse the responding party for the use of its equipment during the period of assistance according to the FEMA fee schedules for hourly rates. For instances in which the costs are reimbursed by FEMA, eligible direct costs shall be determined in accordance with 44 CFR 206.228.

(e) The requesting party shall reimburse the responding party for all material and supplies furnished by it and used or damaged during the period of assistance, except for the cost of equipment, fuel, and maintenance materials, labor, and supplies, which shall be included in the equipment rate unless it is damaged and the damage is caused by the gross negligence, willful and wanton misconduct, intentional misuse, or recklessness of the responding party's personnel. The measure of reimbursement shall be determined in accordance with 44 CFR Part 13 and applicable office of management and budget (OMB) circulars.

(f) The responding party shall maintain records and submit invoices for reimbursement by the requesting party. For instances in which costs are reimbursed by FEMA, the requesting party must submit requests for reimbursement to the Tennessee emergency management agency (TEMA) on forms required by federal emergency management publications, including 44 CFR Part 13 and applicable OMB circulars. The reimbursement request shall include the certification or level of training of the personnel who responded and the type of equipment that was sent.

(g) The responding party shall forward the reimbursable costs with an itemized invoice to the requesting party as soon as possible, but no later than sixty (60) days after the provision of assistance has ended.

(h) Nonparticipating governmental entities and participating governmental

entities that have separate agreements with nonparticipating governmental entities, may by agreement provide for different reimbursement provisions.

(i) The preceding provisions of this section do not apply to aid or assistance provided under § 58-2-113 at the request of TEMA. Reimbursement of costs for aid or assistance provided in these situations is governed by § 58-2-113 and any other applicable provisions of chapter 2 of this title.

History.
Acts 2004, ch. 743, § 1.

58-8-112. Existing mutual aid agreements.

Governmental entities that are parties to existing mutual aid agreements may by resolution of their governing bodies determine to continue to operate under those agreements until they expire or are terminated. If a governmental entity does not affirm the continued existence of the agreement, it shall expire on July 1, 2004, and this chapter applies. If the governmental entity affirms an agreement, the terms of the agreement and applicable authorizing law will continue to govern activities under the agreement. Mutual aid agreements between Tennessee governmental entities and governmental entities in other states are not affected by this chapter and continue to be authorized and governed by the Interlocal Cooperation Act, compiled in title 12, chapter 9, and other applicable law. Except for the continuation of existing agreements as provided in this section, any new agreements made after July 1, 2004, and aid or assistance provided at the request of TEMA under § 58-2-113, this chapter is the exclusive method for providing mutual aid and emergency assistance between governmental entities.

History.
Acts 2004, ch. 743, § 1.

58-8-113. Authority to provide aid or assistance in any area of the state.

In addition to any other authority provided by this chapter, any governmental entity may provide aid or assistance in any area of the state to any state or federal agency upon request by the state or federal agency, and the governmental entity and its employees will be subject to the same protections and immunities they have under this chapter in furnishing aid or assistance to other governmental entities. This section and any other portion of this chapter are in addition to and not in substitution for, and do not diminish, the authority provided in § 58-2-113 or any other law that authorizes a local governmental entity to respond to a request for aid or assistance from TEMA or any other state or federal agency. Nothing in this chapter shall be construed to require that employees of the responding party are to be considered employees of the state or any of its agencies for any purpose.

History.
Acts 2004, ch. 743, § 1.

58-8-114. Recognition and enforcement of laws regarding tort liability.

When any other state provides that it will recognize and enforce the Tennessee Governmental Tort Liability Act, compiled in title 29, chapter 20, and other Tennessee laws governing the tort liability of Tennessee's governmental entities and their employees in any case brought in that state's courts against the governmental entity or its employees arising from aid or assistance provided by a Tennessee governmental entity in that state, Tennessee shall recognize and enforce that state's laws relative to the tort liability of its political subdivisions and their employees and agents in any case brought in a Tennessee court against the political subdivision or its employees and agents arising from aid or assistance provided by the political subdivision of that state in Tennessee.

History.
Acts 2004, ch. 743, § 1.

58-8-115. Reimbursement of eligible costs to governmental utility system.

(a) Notwithstanding § 58-8-111(b), a governmental utility system that is a responding party is eligible for reimbursement and entitled to one hundred percent (100%) reimbursement of eligible costs after the state of emergency is declared.

(b) For purposes of a governmental utility system that is a responding party, "then-prevailing wages, including benefits and overtime" in § 58-8-111(c) means the present wage structure, including benefits and overtime, of the governmental utility system that is a responding party.

(c) For purposes of this section, "governmental utility system" means a governmental entity that provides electric, gas, sewer, water, wastewater, telephone, cable or other like service, or any combination of these services, and is limited to these operations of the governmental entity and does not extend to other operations or functions of the governmental entity.

(d) Notwithstanding § 58-8-111, governmental utility systems and nongovernmental utilities that enter into mutual assistance agreements for the purposes of providing aid or assistance to one another are eligible for reimbursement of all out-of-pocket costs incurred by the responding party.

History.
Acts 2004, ch. 743, § 1; 2009, ch. 388, § 1.

CHAPTER 9

WEST TENNESSEE SEISMIC SAFETY COMMISSION

Section

58-9-101. Creation of commission — Composition — Quorum — Terms of office — Compensation — Information and services from the center for earthquake research and information.
58-9-102. Authority of commission.
58-9-103. Comprehensive program to prepare for responding to a major earthquake.
58-9-104. Commission responsibilities.
58-9-105. Implementation.

58-9-101. Creation of commission — Composition — Quorum — Terms of office — Compensation — Information and services from the center for earthquake research and information.

(a) There is created the west Tennessee seismic safety commission, which shall be attached administratively to the University of Memphis.

(b) The commission shall consist of twelve (12) members, to be appointed as follows: two (2) members chosen by the speaker of the house of representatives, two (2) members chosen by the speaker of the senate and eight (8) members appointed by the governor. The members shall include persons who represent the following professional areas: architecture, fire protection, public utilities, engineering, geology or seismology, local government, insurance, business, emergency health services, nonprofit emergency assistance, local education and emergency management.

(c) The commission shall annually elect a chair and vice chair from its membership. A quorum shall consist of seven (7) members. All commission members shall be residents of the state and shall have reasonable knowledge of issues relating to earthquakes.

(d) The term of office for each member of the commission shall be four (4) years, except that of the initial appointments, six (6) members shall be appointed for terms of two (2) years and six (6) members shall be appointed for terms of four (4) years. Any member may be removed from office by the governor for cause. A member is eligible for reappointment. If there is a vacancy for any cause, the governor shall make an appointment for the unexpired term.

(e) Each member of the commission shall serve without compensation, but shall receive compensation for travel expenses. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

(f) The center for earthquake research and information, created by § 49-8-602, is authorized and directed to provide any information or services requested by the commission.

History.
Acts 2006, ch. 905, § 2.

58-9-102. Authority of commission.

The commission shall have the authority to:

(1) Accept grants, contributions and appropriations from public agencies, private foundations or individuals;

(2) Appoint committees from its membership, appoint advisory committees from interested public and private groups, and appoint ex officio members, to advise the commission, who shall not be entitled to vote;

(3) Contract for or employ, subject to appropriations made for that purpose, any professional and research services required by the commission or required for the performance of necessary work and services that, in the commission's opinion, cannot satisfactorily be performed by its officers and employees or by other federal, state or local governmental agencies;

(4) Enter into agreements to act cooperatively with private nonprofit scientific, educational or professional associations or foundations engaged in promoting seismic safety in Tennessee; and

(5) Do any and all other things necessary to carry out the purposes of this chapter.

History.
Acts 2006, ch. 905, § 3.

58-9-103. Comprehensive program to prepare for responding to a major earthquake.

The commission shall initiate, with the assistance and participation of other state, federal and local government agencies, a comprehensive program to prepare the state for responding to a major earthquake. The program shall be implemented in order to create specific tools or products to be used by governments in responding to an earthquake, such as educational materials for citizens. This program may be implemented on a prototypical basis in one (1) area of the state affected by earthquake predictions; provided, that the program is useful for application in other areas of the state upon its completion.

History.
Acts 2006, ch. 905, § 4.

58-9-104. Commission responsibilities.

The commission is responsible for all of the following in connection with earthquake hazard mitigation:

(1) Setting goals and priorities in the public and private sectors;

(2) Requesting appropriate state agencies, including the emergency management agency, to devise criteria to promote earthquake and disaster safety;

(3) Recommending program changes to state agencies, local agencies and the private sector where the changes would improve earthquake hazards and reduction;

(4) Reviewing the recovery and reconstruction efforts after damaging earthquakes;

(5) Gathering, analyzing and disseminating information;

(6) Encouraging research;

(7) Helping to coordinate the earthquake safety activities of government at all levels; and

(8) Establishing and maintaining necessary working relationships with any boards, commissions, departments and agencies or other public or private organizations.

History.
Acts 2006, ch. 905, § 5.

58-9-105. Implementation.

To implement its responsibilities, the commission may:

(1) Review state budgets and review grant proposals, other than those grant proposals submitted by institutions of postsecondary education to the federal government, for earthquake-related activities and to advise the governor and the general assembly thereon;

(2) Review programs relating to earthquake safety and advise the governor and the general assembly concerning earthquake hazard mitigation proposals; and

(3) Recommend the addition, deletion or changing of state and local agency standards when, in the commission's view, the existing situation creates undue hazards or when new developments would promote earthquake hazard mitigation.

History.
Acts 2006, ch. 905, § 6.

TITLE 59

MINES AND MINING

Chapter
1. Chief and District Mine Inspectors.
2, 3. [Reserved].
4. Certification and Duties of Mine Employees.
5 — 7. [Reserved].
8. Strip and Open Pit Mines.
9. [Reserved].
10. Interstate Mining Compact.
11. Weighing of Coal and Minerals.
12. Mine Rescue Operations.
13. Coal Cooperative Marketing Associations.

CHAPTER 1

CHIEF AND DISTRICT MINE INSPECTORS

Section
59-1-101. Owners and operators to make annual statistical reports — Inspection of books.
59-1-102. False statements in statistical reports — Penalty.
59-1-103. Annual license required for mine operation — Posting.
59-1-104. License — Fee.
59-1-105. Failure to obtain license.

59-1-101. Owners and operators to make annual statistical reports — Inspection of books.

(a) Every owner or operator engaged in mining, quarrying, or production of coal, cobalt, copper, fluorspar, gold, iron ores, lead, zinc, manganese, natural and other gas, petroleum, phosphate rock, platinum, silver, marble and other stone, gypsum, ocher, pyrites, clay products, slate or other minerals, or engaged in the manufacture of coke, coal tar, gas, pig iron, ammonium sulphate, gas coke, Portland and other natural cements and all other by-products of any other mineral produced in this state, shall on or before February 15 of each year make out and send to the department of labor and workforce development on a form prescribed by the division a detailed annual report giving statistics and information concerning the output of mines or plants or other business, the tonnage or man hours for mines that do not measure tons mined, number of employees, and the estimated number of days worked.

(b) It is a Class C misdemeanor for any person to fail or refuse to furnish the department any and all information called for in the annual report as above provided for each day of delay, any fine to go to this state. It is the duty of the commissioner of labor and workforce development or the commissioner's designated representative to report such failure to the district attorney general of the district where the mine, quarry, plant, or other work is situated; and in the event of the failure to furnish such information, it shall be the duty of the commissioner or the commissioner's designated representative to call upon such persons and inspect such books and records as will give the information

above provided for; and such person shall be required to permit examination of all necessary books or records.

History.
Acts 1915, ch. 169, § 7; Shan., § 3079a78; Code 1932, § 5562; modified; T.C.A. (orig. ed.), § 58-113; Acts 1985, ch. 288, §§ 43-47; 1989, ch. 591, § 113; 1999, ch. 520, § 43; 2016, ch. 599, § 7; 2017, ch. 356, § 1; T.C.A. § 59-1-113.

Code Commission Notes. This section was renumbered from § 59-1-113 to § 59-1-101 by authority of the Code Commission in 2018.

Compiler's Notes.
Acts 2016, ch. 599, § 7, provided that references to the elevator division, division of mines, labor standards division, and division of boiler and elevator inspection, are to be changed to the department of labor and workforce development as sections are amended and volumes are replaced.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

59-1-102. False statements in statistical reports — Penalty.

(a) It is unlawful for any person required to furnish statistical reports to any state department to knowingly and willfully make a false statement in any detail of such reports.

(b) A violation of this section is a Class C misdemeanor.

History.
Acts 1953, ch. 86, §§ 94, 95 (Williams, §§ 5638.94, 5638.95); T.C.A. (orig. ed.), § 58-114; Acts 1989, ch. 591, § 113; T.C.A. § 59-1-114.

Code Commission Notes. This section was renumbered from § 59-1-114 to § 59-1-102 by authority of the Code Commission in 2018.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

59-1-103. Annual license required for mine operation — Posting.

(a) The owner or operator of each mine shall procure from the department of labor and workforce development a license to operate a mine, and the license shall not be transferable. Any person who assumes control of a mine, opens a new mine, or reopens an abandoned mine shall procure a license to operate the mine before mining operations are begun. All licenses are valid for one (1) year from the date of issuance and shall be renewed annually.

(b) The license shall be in such printed form as the department of labor and workforce development may prescribe and when issued shall be kept posted at a conspicuous place near the main entrance of the mine.

History.
Acts 1955, ch. 238, § 3; T.C.A., § 58-115; Acts 1985, ch. 288, § 2; 1986, ch. 557, § 1; 1999, ch. 520, § 43; 2016, ch. 599, § 7; T.C.A. § 59-1-115.

Code Commission Notes. This section was renumbered from § 59-1-115 to § 59-1-103 by authority of the Code Commission in 2018.

Compiler's Notes.
Acts 2016, ch. 599, § 7, provided that references to the elevator division, division of mines, labor standards division, and division of boiler and elevator inspection, are to be changed to the department of labor and workforce development as sections are amended and volumes are replaced.

59-1-104. License — Fee.

(a) Requests for such license shall be made to the department of labor and workforce development, giving name and address and such requests shall be accompanied by a post office money order or cashier's or certified check drawn

in favor of the state treasurer in the amount of two hundred fifty dollars ($250) for each surface coal or metal mine and five hundred dollars ($500) for each underground coal or metal mine. All funds derived from this section shall be expendable receipts of the department, shall be in addition to the appropriations made to the department by the general assembly, and shall not revert to the general fund at the end of a fiscal year or biennium.

(b) Notwithstanding subsection (a), the commissioner of labor and workforce development shall increase the amount of the license fees charged under this section to the extent necessary to offset the reduction of the department's appropriation for mine licensing operations under the general appropriations act for fiscal year 2000-2001.

History.
Acts 1955, ch. 238, § 3; 1957, ch. 253, §§ 1, 2; 1972, ch. 458, § 1; 1979, ch. 368, § 7; T.C.A., § 58-116; Acts 1985, ch. 288, §§ 3, 4; 1999, ch. 520, § 43; 2000, ch. 983, § 3; 2005, ch. 407, § 3; 2016, ch. 599, § 7; T.C.A. § 59-1-116.

Code Commission Notes. This section was renumbered from § 59-1-116 to § 59-1-104 by authority of the Code Commission in 2018.

Compiler's Notes.
Acts 2016, ch. 599, § 7, provided that references to the elevator division, division of mines, labor standards division, and division of boiler and elevator inspection, are to be changed to the department of labor and workforce development as sections are amended and volumes are replaced.

59-1-105. Failure to obtain license.

Any owner or operator operating a mine and who fails to obtain a license as required by §§ 59-1-103 and 59-1-104 shall forfeit the right to operate a mine in this state, and the commissioner of labor and workforce development or the commissioner's designated agent shall have the authority to close the mine until the license is obtained as provided for by those sections.

History.
Acts 1955, ch. 238, § 3; T.C.A., § 58-117; Acts 1985, ch. 288, § 5; 1999, ch. 520, § 43; T.C.A. § 59-1-117.

Code Commission Notes. This section was renumbered from § 59-1-117 to § 59-1-105 by authority of the Code Commission in 2018.

CHAPTERS 2, 3 [RESERVED]

CHAPTER 4

CERTIFICATION AND DUTIES OF MINE EMPLOYEES

Part 1. Examinations

Section
59-4-101. Position of mine foreman — Examinations for applicants.

Part 2. Certification

59-4-201. Evidence of qualifications — Fees — Temporary permits.
59-4-202. Reports to secretary of state — Certification of applicants.
59-4-203. Contents of certificate — Record by secretary of state.
59-4-204. Revocation of certificate.
59-4-205. Notice of revocation — Certification to secretary of state — Surrender of certificate — Penalty for failure to surrender.
59-4-206. Lost certificates — Copies.
59-4-207. Penalty for forging or falsifying certificates.
59-4-208. Registration and certification requirements for mine foremen.

Part 3. Mine Foremen

Section
59-4-301. Qualifications and duties of mine foreman — Penalty for failure to comply with laws.
59-4-302. Mine foreman is agent or representative of operator or owner.
59-4-303. Foreman to give notice of accidental death — Inquest — Notice of fire or explosion.

Part 4. Miscellaneous Provisions

59-4-401. Reports required of owners, superintendents or foremen.
59-4-402. Rules and regulations.
59-4-403. Mine safety training programs — Fee.

PART 1

EXAMINATIONS

59-4-101. Position of mine foreman — Examinations for applicants.

The commissioner of labor and workforce development or the commissioner's representative is hereby authorized to develop, conduct, and administer an examination for applicants for certificates of qualification for the position of mine foreman and to ascertain the qualifications of such applicants.

History.

Acts 1915, ch. 169, § 13; Shan., § 3079a99; Code 1932, § 5582; Acts 1949, ch. 190, § 5; mod. C. Supp. 1950, § 5582; Acts 1953, ch. 86, § 22 (Williams, §§ 5582, 5638.22); Acts 1959, ch. 9, § 15; T.C.A. (orig. ed.), § 58-401; Acts 1985, ch. 288, § 19; 1992, ch. 574, § 2; 1999, ch. 520, § 43.

Law Reviews.

Administrative Law — 1959 Tennessee Survey (Harold Seligman), 12 Vand. L. Rev. 1057.

PART 2

CERTIFICATION

59-4-201. Evidence of qualifications — Fees — Temporary permits.

(a)(1) Before the issuance of certificates to any applicant, the applicant must give satisfactory evidence to the commissioner of labor and workforce development or the commissioner's authorized representative of the applicant's good conduct, honesty, capability, and sobriety, and shall pay the commissioner or the commissioner's authorized representative for the use and benefit of the state the following fees:

(A) For conducting the examination (to be paid when examination is held) twenty-five dollars ($25.00); and

(B) For issuance and registration of the certificates, twenty-five dollars ($25.00) to be paid when issued.

(2) All fees collected by virtue of this section shall be reported and paid into the state treasury at the end of the month during which the collections are made by the commissioner or the commissioner's authorized representative, to be placed to the credit of the department of labor and workforce development.

(b) The commissioner or the commissioner's designee may examine any applicant for a temporary certificate of qualifications, upon request, and if such applicant is found to be competent, the applicant may be issued a temporary

permit to act as mine foreman thereunder until the next mine foreman examination is held, when the temporary permit shall expire. Only one (1) such temporary permit shall be issued to any applicant. As a condition for the issuance of a temporary permit, the commissioner or the commissioner's authorized representative is authorized to examine applicants to determine if they are qualified to test for methane with an approved detector.

History.
Acts 1915, ch. 169, § 14; Shan., § 3079a106; mod. Code 1932, § 5589; Acts 1953, ch. 86, § 29 (Williams, §§ 5589, 5638.29); Acts 1955, ch. 238, § 6; 1971, ch. 38, § 1; 1972, ch. 458, § 2; T.C.A. (orig. ed.), § 58-404; Acts 1985, ch. 288, §§ 23-25; 1992, ch. 574, §§ 4, 5; 1999, ch. 520, § 43; 2000, ch. 810, § 1; 2016, ch. 599, § 7.

Compiler's Notes.
Acts 2016, ch. 599, § 7, provided that references to the elevator division, division of mines, labor standards division, and division of boiler and elevator inspection, are to be changed to the department of labor and workforce development as sections are amended and volumes are replaced.

59-4-202. Reports to secretary of state — Certification of applicants.

The commissioner of labor and workforce development shall report the commissioner's action to the secretary of state and shall certify to the qualifications of each applicant who satisfactorily passed the examination.

History.
Acts 1915, ch. 169, § 13; Shan., § 3079a102; Code 1932, § 5585; Acts 1953, ch. 86, § 25 (Williams, §§ 5585, 5638.25); T.C.A. (orig. ed.), § 58-405; Acts 1992, ch. 574, § 6; 1999, ch. 520, § 43.

59-4-203. Contents of certificate — Record by secretary of state.

The certificate shall contain the full name, age, social security number, and place of birth of the applicant; also the length and nature of the applicant's previous experience in and about coal and other mines; and the secretary of state shall, without cost, keep a record in the secretary of state's office of all certificates issued.

History.
Acts 1915, ch. 169, § 14; Shan., § 3079a105; Code 1932, § 5588; Acts 1953, ch. 86, § 28 (Williams, §§ 5588, 5638.28); T.C.A. (orig. ed.), § 58-406; Acts 1985, ch. 288, § 26.

59-4-204. Revocation of certificate.

(a) The commissioner of labor and workforce development or the commissioner's authorized representative may, upon a written complaint, investigate a mine foreman to whom a certificate has been issued under this chapter, and may revoke a mine foreman certificate upon a finding that the holder has been guilty of incompetence in the performance of the holder's duties or for any cause for which issuance of a certificate could have been refused had it been known to the commissioner or the commissioner's authorized representative at the time of issuance; provided, that a holder of a certificate shall be given ten (10) days notice from the commissioner or the commissioner's authorized representative to appear before the commissioner or the commissioner's authorized representative to show cause why such certificate should not be revoked.

(b) The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, governs the conduct of all proceedings before the commissioner or the

commissioner's authorized representative in the revocation of mine foreman certificates.

History.
Acts 1915, ch. 13, § 4; 1915, ch. 169, § 13; Shan., § 3079a103; Code 1932, § 5586; Acts 1953, ch. 86, § 26 (Williams, §§ 5586, 5638.26); T.C.A. (orig. ed.), § 58-407; Acts 1985, ch. 288, § 27; 1992, ch. 574, §§ 7, 8; 1999, ch. 520, § 43.

59-4-205. Notice of revocation — Certification to secretary of state — Surrender of certificate — Penalty for failure to surrender.

If the certificate is revoked, the holder of such certificate and the employer of the holder shall each be notified of such revocation, and the department of labor and workforce development shall immediately certify the same to the secretary of state, who shall record the revocation upon a book containing copies of certificates issued, and the holder of the certificate shall immediately surrender the revoked certificate to the department of labor and workforce development, to be turned over to the secretary of state for cancellation. A holder of a revoked certificate who fails or refuses to surrender it is guilty of a Class C misdemeanor.

History.
Acts 1915, ch. 169, § 13; Shan., § 3079a104; mod. Code 1932, § 5587; Acts 1953, ch. 86, § 27 (Williams, §§ 5587, 5638.27); T.C.A. (orig. ed.), § 58-408; Acts 1985, ch. 288, §§ 28, 29; 1989, ch. 591, § 113; 2016, ch. 599, § 7.

Compiler's Notes.
Acts 2016, ch. 599, § 7, provided that references to the elevator division, division of mines, labor standards division, and division of boiler and elevator inspection, are to be changed to the department of labor and workforce development as sections are amended and volumes are replaced.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

59-4-206. Lost certificates — Copies.

In case of the loss or destruction of a certificate, the secretary of state may supply a copy thereof to the person losing same upon the payment of fifty cents (50¢); provided, that it shall be shown to the satisfaction of the secretary of state that the loss has actually occurred and the loser was a holder of such certificate.

History.
Acts 1915, ch. 169, § 16; Shan., § 3079a108; mod. Code 1932, § 5591; Acts 1953, ch. 86, § 30 (Williams, §§ 5591, 5638.30); T.C.A., (orig. ed.), § 58-409.

59-4-207. Penalty for forging or falsifying certificates.

Any person who forges or counterfeits a certificate, or knowingly makes or causes to be made any false statement in any certificate or in any official copy of the same, or urges and influences others to do so, or utters or uses any such false certificate or unofficial copy thereof, or makes, gives, utters, produces, or makes use of any false declaration, representation, or statement in any such certificate or copy thereof, or any document containing same, is guilty of a Class C misdemeanor.

History.
Acts 1915, ch. 169, § 17; Shan., § 3079a109; Code 1932, § 5592; Acts 1953, ch. 86, § 31 (Williams §§ 5592, 5638.31); T.C.A. (orig. ed.), § 58-410; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

59-4-208. Registration and certification requirements for mine foremen.

(a)(1) It is unlawful for any person to act as mine foreman unless the person is registered as holder of a certificate of competency as required by this chapter.

(2) It is unlawful for an individual, partnership, firm, or corporation operating a mine or mines in this state to employ any person in the capacity of mine foreman unless the person is registered as a holder of such certificate of competency.

(b)(1) Each mine foreman employed at an underground coal mine shall possess a Class "A" mine foreman certificate.

(2) Each mine foreman employed at an open pit mine, metal mine, or preparation plant shall possess a Class "C" mine foreman certificate.

History.
Acts 1915, ch. 169, §§ 12, 15, 18; Shan., §§ 3079a98, 3079a107, 3079a110; Code 1932, §§ 5581, 5590, 5593; Acts 1947, ch. 217, § 2; C. Supp. 1950, § 5581; Acts 1951, ch. 245, § 12 (Williams, § 5551); Acts 1953, ch. 86, § 14 (Williams, § 5638.14); modified; T.C.A. (orig. ed.), § 58-411; Acts 1985, ch. 288, § 30.

Textbooks.
Tennessee Jurisprudence, 18 Tenn. Juris., Mines and Minerals, § 5.

PART 3

MINE FOREMEN

59-4-301. Qualifications and duties of mine foreman — Penalty for failure to comply with laws.

(a) In order to protect the health and safety of persons employed in or around mines and the mine property, the operator or superintendent shall employ a competent and practical overseer of each and every mine whose title shall be "mine foreman."

(b) The foreman shall be certified as hereinbefore required in this chapter, and shall see that the applicable federal and state safety and health standards, regulations, and laws are complied with. Where it is necessary that the mine foreman be temporarily absent from the mine, the foreman shall place the mine in charge of a qualified assistant during such absence.

(c)(1) As used in this section:

(A) "Mining site" means all mines and the surrounding property used in mining operations; and

(B) "Qualified assistant" means a person who is designated by the owner or operator to ensure that all legal, safety, and compliance standards are enforced.

(2) A qualified assistant shall have the ability, training, knowledge, and experience to ensure compliance with all legally imposed safety standards.

(3) A qualified assistant must be able to effectively communicate legally imposed safety standards to all persons present at the mining site.

(4) A qualified assistant shall have the same authority as the foreman when the foreman is not present at the mining site.

(5) A qualified assistant shall not be considered an agent or representative of the owner or operator for the purposes of § 59-4-302.

(6) More than one (1) person may be designated as a qualified assistant, if circumstances or logistics related to the mining site so require.

(7)(A) The designation by the owner or operator of a qualified assistant shall be in writing and specify the beginning and end dates of the designation.

(B) The written designation required under subdivision (c)(7)(A) shall be prominently displayed at the office of the foreman on site, or displayed in such a manner that persons present at the mining site have actual notice of the designation.

(d) Failure of the mine foreman to comply with the duties set forth herein is a Class B misdemeanor.

History.

Acts 1915, ch. 169, § 19; Shan., §§ 3079a111, 3079a118; Code 1932, §§ 5594, 5601; Acts 1949, ch. 190, § 6; C. Supp. 1950, § 5594; Acts 1951, ch. 245, § 13 (Williams, § 5552); Acts 1953, ch. 86, § 15 (Williams, § 5638.15); T.C.A. (orig. ed.), § 58-412; Acts 1985, ch. 288, §§ 31, 32; 1989, ch. 591, § 112; 2017, ch. 356, § 2.

Cross-References.

Penalty for Class B misdemeanor, § 40-35-111.

Textbooks.

Tennessee Jurisprudence, 18 Tenn. Juris., Mines and Minerals, § 5.

59-4-302. Mine foreman is agent or representative of operator or owner.

The mine foreman is expressly declared to be the agent or representative of the operator or owner of the mine in the discharge of the duties required of such foreman by this title.

History.

Acts 1915, ch. 169, § 19; Shan., § 3079a117; Code 1932, § 5600; Acts 1953, ch. 86, § 32 (Williams, §§ 5600, 5638.32); T.C.A. (orig. ed.), § 58-413.

Textbooks.

Tennessee Jurisprudence, 18 Tenn. Juris., Mines and Minerals, § 5.

NOTES TO DECISIONS

Analysis

1. Constitutionality.
2. Mine Owner and Foreman Relationship.

1. Constitutionality.

This section is not unconstitutional as depriving the owner of his property without due process of law. Ducktown Sulphur, Copper & Iron Co. v. Galloway, 262 F. 669, 1920 U.S. App. LEXIS 1593 (6th Cir. Tenn. 1920).

2. Mine Owner and Foreman Relationship.

Notwithstanding the restrictions placed upon the owner in the selection of his mine foreman, the latter is to be considered the employee of the owner or operator, and the doctrine of respondeat superior applies in case miner is injured by reason of the foreman's negligence. Ducktown Sulphur, Copper & Iron Co. v. Galloway, 262 F. 669, 1920 U.S. App. LEXIS 1593 (6th Cir. Tenn. 1920).

The argument that the foreman is required to give all his time to his statutory duties, and that, since he would have no time remaining for performance of duties directed by the owner or operator, it must be assumed that he is subject to no such duties, and since the owner cannot

control the foreman in his statutory duties, the owner has no power to control the foreman at all, and that therefore the former cannot be held liable for the latter's acts under the doctrine of respondeat superior, is not controlling as against the provisions of § 59-4-302 making the foreman the owner's agent. Ducktown Sulphur, Copper & Iron Co. v. Galloway, 262 F. 669, 1920 U.S. App. LEXIS 1593 (6th Cir. Tenn. 1920).

59-4-303. Foreman to give notice of accidental death — Inquest — Notice of fire or explosion.

Whenever loss of life occurs by accident or explosion, the superintendent or foreman in charge shall give immediate notice to the department of labor and workforce development and to the coroner of the county in which the mine is situated. The coroner shall hold an inquest upon the body of the person whose death has been caused, and inquire carefully into the cause thereof, and shall return the findings and all testimony to the department. The company shall immediately notify the department upon the discovery of fire or explosion in any mine.

History.

Acts 1915, ch. 169, § 24; Shan., § 3079a139; Acts 1917, ch. 111; Code 1932, § 5622; Acts 1943, ch. 143, § 1; C. Supp. 1950, § 5622; Acts 1953, ch. 86, § 18 (Williams, §§ 5622, 5638.18); T.C.A. (orig. ed.), § 58-414; Acts 1985, ch. 288, §§ 33-35; 2016, ch. 599, § 7.

Compiler's Notes.

Acts 2016, ch. 599, § 7, provided that references from the elevator division, division of mines, labor standards division, and division of boiler and elevator inspection, are to be changed to the department of labor and workforce development as sections are amended and volumes are replaced.

PART 4

MISCELLANEOUS PROVISIONS

59-4-401. Reports required of owners, superintendents or foremen.

It is the further duty of every owner, lessee of any coal lands, superintendent, or foreman to report the facts in the following cases promptly, to the department of labor and workforce development:

(1) Any change in the name of any mine or any owner, agent, manager, superintendent, foreman (including, in the case of commercial coal mines, any change in assistant foreman or the officers of any company) which owns and operates a mine in this state;

(2) Any working commenced for the purpose of opening a new shaft, slope, or mine;

(3) Where any mine is abandoned or the working thereof is discontinued indefinitely;

(4) Where the working of any mine is recommenced after any abandonment or discontinuance for a period of two (2) months;

(5) Every lost-time accident in a mine other than a commercial coal mine, whether it results in death or not; and

(6) Every accident of any nature to a person in a commercial coal mine, whether it results in death or not.

History.
Acts 1915, ch. 169, § 24; 1917, ch. 111; Shan., § 3079a141; Code 1932, § 5624; Acts 1951, ch. 245, § 16 (Williams, § 5555); Acts 1953, ch. 86, § 16 (Williams, § 5638.16); modified; T.C.A. (orig. ed.), § 58-415; Acts 1985, ch. 288, §§ 36-38; 2016, ch. 599, § 7.

Compiler's Notes.
Acts 2016, ch. 599, § 7, provided that references to the elevator division, division of mines, labor standards division, and division of boiler and elevator inspection, are to be changed to the department of labor and workforce development as sections are amended and volumes are replaced.

59-4-402. Rules and regulations.

The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this chapter and chapter 12 of this title. All such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 1992, ch. 574, § 9.

59-4-403. Mine safety training programs — Fee.

The department of labor and workforce development is authorized to organize and conduct mine safety training programs for the mining industry in Tennessee. The department is authorized to charge a fee sufficient to defray the costs of administering this chapter, but not to exceed three hundred fifty dollars ($350) for each training class consisting of up to ten (10) participants and fifteen dollars ($15.00) per additional participant.

History.
Acts 2000, ch. 810, § 2.

CHAPTERS 5 — 7 [RESERVED]

CHAPTER 8

STRIP AND OPEN PIT MINES

Part 1. Primacy and Reclamation Act of Tennessee

Section
59-8-101. Short title. [Contingent effective date, see Compiler's Notes.]
59-8-102. Part definitions. [Contingent effective date, see Compiler's Notes.]
59-8-103. Powers of commissioner and board. [Contingent effective date, see Compiler's Notes.]
59-8-104. Additional powers of commissioner. [Contingent effective date, see Compiler's Notes.]
59-8-105. Coal exploration operations and activities. [Contingent effective date, see Compiler's Notes.]
59-8-106. Permits for surface coal mining and reclamation activities. [Contingent effective date, see Compiler's Notes.]
59-8-107. Permit and acreage fees. [Contingent effective date, see Compiler's Notes.]
59-8-108. Performance bond or security requirements. [Contingent effective date, see Compiler's Notes.]
59-8-109. Mining and reclamation plan. [Contingent effective date, see Compiler's Notes.]
59-8-110. Performance standards. [Contingent effective date, see Compiler's Notes.]
59-8-111. Permits for underground coal mining. [Contingent effective date, see Compiler's Notes.]
59-8-112. Administratively complete permit applications — Objections — Informal conferences — Approval or disapproval — Approval or disapproval of mining and reclamation plan

Section
— Termination of permit —Revision of permit. [Contingent effective date, see Compiler's Notes.]
59-8-113. Revision of permit — Transfer, assignment, or sale prohibited without approval. [Contingent effective date, see Compiler's Notes.]
59-8-114. Inspection of surface coal mining and reclamation operations — Sign — Violations — Records and reports — Monitoring data collection and analysis. [Contingent effective date, see Compiler's Notes.]
59-8-115. Request for release of all or part of performance bond or deposit. [Contingent effective date, see Compiler's Notes.]
59-8-116. Complaints — Cease and desist orders. [Contingent effective date, see Compiler's Notes.]
59-8-117. Civil penalty — Notice of proposed assessment — Hearing — Appeal —Recovery of assessment or violation — Violations — Correction of violation. [Contingent effective date, see Compiler's Notes.]
59-8-118. Civil action for relief — Action to enforce order. [Contingent effective date, see Compiler's Notes.]
59-8-119. Civil action by aggrieved person — Intervention by commissioner. [Contingent effective date, see Compiler's Notes.]
59-8-120. Hearings. [Contingent effective date, see Compiler's Notes.]
59-8-121. Judicial review — Temporary relief. [Contingent effective date, see Compiler's Notes.]
59-8-122. Enforcement or protection of interest in water resources affected by mining operation — Repair or compensation for subsidence damage — Replacement of water supply. [Contingent effective date, see Compiler's Notes.]
59-8-123. Departure from environmental protection performance standards on experimental basis. [Contingent effective date, see Compiler's Notes.]
59-8-124. Declaration of hazard — Authority of commissioner to fill or reclaim. [Contingent effective date, see Compiler's Notes.]
59-8-125. Designation of land area as unsuitable for surface coal mining and reclamation operations. [Contingent effective date, see Compiler's Notes.]
59-8-126. Promulgation of rules requiring training, examination, and certification of persons engaging in, or directly responsible for, blasting or use of explosives. [Contingent effective date, see Compiler's Notes.]
59-8-127. Department employee prohibited from having financial interest in underground coal mining operation or surface coal mining and reclamation operation. [Contingent effective date, see Compiler's Notes.]
59-8-128. Part ancillary and supplemental to other state laws. [Contingent effective date, see Compiler's Notes.]
59-8-129. Conformance with statutes and rules. [Contingent effective date, see Compiler's Notes.]
59-8-130. Compliance by agency, unit, or instrumentality of state, federal, or local government. [Contingent effective date, see Compiler's Notes.]
59-8-131. Hearing involving major energy project. [Contingent effective date, see Compiler's Notes.]
59-8-132. Coal mining protection fund.
59-8-133. Implementation of part — Cost of administering and enforcing part. [Contingent effective date, see Compiler's Notes.]
59-8-134. Report required for revenues generated from fees. [Contingent effective date, see Compiler's Notes.]

Part 2. Tennessee Mineral Surface Mining Law of 1972

59-8-201. Short title.
59-8-202. Definitions. [See contingent amendment to subdivision (3) and Compiler's Notes.]
59-8-203. Purpose of act.
59-8-204. Powers of the commissioner.
59-8-205. Permits, requirements and criteria — Amendment — Appeal upon failure to grant — Renewal.
59-8-206. Fees.
59-8-207. Performance bonds.
59-8-208. Mining and reclamation plans.
59-8-209. Revegetation plan.
59-8-210. Annual report to be filed with commissioner.
59-8-211. Notice of noncompliance — Forfeiture of bond.
59-8-212. Tennessee surface mine reclamation fund — Other available funds. [Current version. See second version of section and Compiler's Notes.]

Section
59-8-212. Tennessee surface mine reclamation fund — Other available funds. [Contingent amendment. See first version of section and Compiler's Notes.]
59-8-213. Utilizing services of other agencies or persons — Compensation — Funding.
59-8-214. Right of access.
59-8-215. State's power to acquire land affected by surface mining.
59-8-216. Commissioner's power to effect reclamation subject to availability of funds.
59-8-217. Acquisitions and disposals of land after reclamation.
59-8-218 — 59-8-221. [Reserved.]
59-8-222. Civil and criminal penalties — Enforcement — Rights preserved.
59-8-223. Injunctive relief.
59-8-224. Supplemental nature of part.
59-8-225. Immediate conformity to statutes or regulations required.
59-8-226. Sanctions applicable only to mines in violation.
59-8-227. [Reserved.]
59-8-228. Certain exploratory drilling regulated under Mineral Test Hole Regulatory Act exclusively.

Part 3. Tennessee Coal Surface Mining Law of 1980

59-8-301. State's power to acquire and reclaim land disturbed by past mining.
59-8-302. Liens.
59-8-303. Tennessee surface mine reclamation fund.
59-8-304. Definitions for §§ 59-8-304 — 59-8-309. [See contingent amendment to subdivision (1) and the Compiler's Notes.]
59-8-305. Violations — Penalties.
59-8-306. Applicability of prior law.
59-8-307. When permits required.
59-8-308. Commissioner and personnel — Powers.
59-8-309. Rules and regulations.

Part 4. Coal Surface Mining Act of 1987

59-8-401. Short title.
59-8-402. Legislative findings and intent.
59-8-403. Part definitions. [See contingent amendment to subdivision (2) and Compiler's Notes.]
59-8-404. Commissioner's powers generally.
59-8-405. Emergency authority.
59-8-406. Permits generally.
59-8-407. Mining and reclamation plans.
59-8-408. Bond requirements.
59-8-409. Action on permit applications.
59-8-410. Permit approval — Required findings.
59-8-411. Public notice and review — Appeal from commissioner's decision. [See contingent amendment to subdivision (c)(2) and the Compiler's Notes.]
59-8-412. Performance standards.
59-8-413. Inspections. [See contingent amendment to subdivision (e)(5) and Compiler's Notes.]
59-8-414. Release of bond. [See contingent amendment to subsection (b) and the Compiler's Notes.]
59-8-415. Noncompliance.
59-8-416. Permit revocation and bond forfeiture proceedings. [See contingent amendment to subdivision (f)(1) and the Compiler's Notes.]
59-8-417. Civil actions. [See contingent amendment to subdivision (b)(1) and the Compiler's Notes.]
59-8-418. Permit application fees.
59-8-419. Coal purchases — Permit information, etc., required.
59-8-420. Publicly owned mining operations.
59-8-421. Section 66-5-102 unaffected.

PART 1

PRIMACY AND RECLAMATION ACT OF TENNESSEE [CONTINGENT EFFECTIVE DATE, SEE COMPILER'S NOTES.]

59-8-101. Short title. [Contingent effective date, see Compiler's Notes.]

This part shall be known and may be cited as the "Primacy and Reclamation Act of Tennessee."

History.
Acts 2018, ch. 839, § 1.

Compiler's Notes.
Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.
Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-102. Part definitions. [Contingent effective date, see Compiler's Notes.]

As used in this part, unless the context otherwise requires:

(1) "Affected area":

(A) Means any land or water surface area that is used to facilitate, or is physically altered by, coal surface mining and reclamation operations; and

(B) Includes:

(i) The disturbed area;

(ii) Any area upon which coal surface mining and reclamation operations are conducted;

(iii) Any adjacent lands, the use of which is incidental to coal surface mining and reclamation operations;

(iv) All areas covered by new or existing roads used to gain access to, or for hauling coal to or from, coal surface mining and reclamation operations, unless the road is a maintained public road;

(v) Any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, or shipping areas;

(vi) Any areas upon which are sited structures, facilities, or other property or materials on the surface resulting from, or incidental to, coal surface mining and reclamation operations; and

(vii) The area located above underground workings;

(2) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining, and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated;

(3) "Board" means the Tennessee board of energy and natural resources, established by § 69-3-104;

(4) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several states or between a state and any other place outside it, or between points in the same state which directly or indirectly affect interstate commerce;

(5) "Commissioner" means the commissioner of environment and conservation or the commissioner's designee;

(6) "Department" means the department of environment and conservation;

(7) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this part in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation could be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement;

(8) "Locality" means the county where all or the majority of a surface coal mining and reclamation operation is located;

(9) "Office" means the office of surface mining reclamation and enforcement, established by the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201, et seq.);

(10) "Operator" means any person, partnership, or corporation engaged in surface coal mining who removes or intends to remove more than two hundred fifty (250) tons of coal from the earth by surface coal mining within twelve (12) consecutive months in any one (1) location;

(11) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commissioner;

(12) "Permit applicant" or "applicant" means a person applying for a permit;

(13) "Permit area" means the area of land indicated on the approved map submitted by the permit applicant with the applicant's application, which area of land is covered by the operator's bond as required by this part;

(14) "Permittee" means a person holding a permit;

(15) "Person":

(A) Means an individual, partnership, association, society, governmental agency or entity, joint stock company, firm, company, corporation, or other business organization; and

(B) Does not mean the board, department, and their officials and employees acting in their official capacity;

(16) "Prime farmland" has the same meaning as that previously prescribed by the secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics; which historically has been used for intensive agricultural purposes; and as published in 7 CFR 657.5;

(17) "Reclamation plan" means a plan submitted by an applicant for a permit under § 59-8-109, that sets forth a plan for reclamation of the proposed surface coal mining and reclamation operations;

(18) "Secretary" means the secretary of the interior;

(19) "Spoil bank" means the overburden as it is piled or deposited in the process of mining;

(20) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of surface coal mining operations occurring on and after the effective date of this part [see the Compiler's Notes];

(21) "Surface coal mining operations" means:

(A)(i)*(a)* Activities conducted on the surface of lands in connection with a surface coal mine; or

(b) Surface operations and surface impacts incident to an underground coal mine that are subject to § 59-8-111;

(ii) The activities:

(a) Include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, cross ridge, box cut, open pit, and area mining; the uses of explosives and blasting; and in situ distillation or retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; and

(b) Do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 2/3%) of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to § 59-8-105; and

(B) The areas upon which the activities described in subdivision (21)(A) occur or where the activities disturb the natural land surface. "Areas" include:

(i) Any adjacent land, the use of which is incidental to any of the activities described in subdivision (21)(A);

(ii) All lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of any of the activities described in subdivision (21)(A) and for haulage; however, maintained public roads are not "areas"; and

(iii) Excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are

sited structures, facilities, or other property or materials on the surface, resulting from or incident to any of the activities described in subdivision (21)(A); and

(22) "Unwarranted failure to comply" means the failure of a person, operator, or permittee to prevent the occurrence of any violation of a permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of a permit or this part due to indifference, lack of diligence, or lack of reasonable care.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-103. Powers of commissioner and board. [Contingent effective date, see Compiler's Notes.]

(a)(1) The commissioner shall:

(A) Administer and enforce this part and rules, permits, and orders promulgated or issued under this part;

(B) Conduct and obtain investigations, research, experiments, training programs, and demonstrations; and collect and disseminate information relating to exploration, surface mining, reclamation of disturbed lands, and control of pollution of water and soil affected by exploration and surface mining for coal;

(C) Issue notices of violations, cease and desist orders, or other orders as authorized by this part, in the office or on-site, requiring the adoption by a person, operator, or permittee of remedial measures necessary for carrying out this part or permits issued under this part;

(D) Examine and either approve, modify, or disapprove applications for permits, maps, bonds, mining and reclamation plans, revegetation plans, and after-use plans submitted by applicants;

(E) Make investigations and inspections that are necessary to ensure compliance with this part, with the authority to enter at any time upon a suspected or affected area for investigations and inspections and the right of ingress and egress across intervening properties;

(F) Employ and commission qualified individuals as surface mine reclamation personnel; provided, when properly qualified and commis-

sioned, surface mine reclamation personnel shall enforce all laws, rules, permits, and orders administered by the department, including, but not limited to, authorization to serve process; and

(G) Establish a process whereby a single set of forms and information, submitted in multiple copies to the division of water resources and the commissioner under § 59-8-106(a), shall contain sufficient mutually needed information to serve as a basic application for the permits issued by the division and the commissioner; provided, the evaluation of applications is made cooperatively, and decisions to grant or deny the permits are made simultaneously.

(2) The commissioner may:

(A) To the extent permitted by federal law and regulations, grant a continuation of an existing permit for a maximum of sixty (60) days in order for the operator to complete the mining phases of the operation;

(B) Enter into contracts or other agreements for reclamation of sites pursuant to this chapter, or to otherwise further the purposes of this part;

(C) In addition to the powers authorized to the commissioner under § 59-8-326, expend or cause to be expended money from the Tennessee surface mine reclamation fund, created by § 59-8-326, for purposes of this chapter; and

(D) Permit water impoundments when the commissioner determines that the water impoundments are in compliance with this part.

(b) The board shall:

(1)(A) Promulgate rules to effectuate this part. The rules may take proper account of mining conditions and practices in this state and differences in topography, geology, and soil conditions, and established use patterns of neighboring lands as recognized by local or state planning agencies;

(B) Within ninety (90) days after the effective date of this part [see the Compiler's Notes], promulgate emergency rules that conform to the corresponding federal regulations promulgated under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201, et seq.);

(C) Within sixty (60) days of the promulgation, amendment, modification, repeal, or determination of invalidity of any federal regulation promulgated under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201, et seq.), promulgate rules to conform the board's rules to the current federal regulation;

(D) Use emergency rulemaking in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to promulgate any of the rules required by subdivisions (b)(1)(A)-(C). Prior to the expiration of rules promulgated as emergency rules, the board shall promulgate permanent rules in accordance with title 4, chapter 5, part 2; and

(E) Unless otherwise specifically authorized by this part, not promulgate a rule under this subdivision (b)(1) that imposes a requirement that is more restrictive than, or inconsistent with, any existing federal regulation promulgated under the Surface Mining Control and Reclamation Act of 1977. In any year in which the board has not promulgated rules that are substantively similar to the corresponding federal regulations because a provision of this part is more stringent than the Surface Mining Control

and Reclamation Act of 1977, the board shall make a written report that identifies any state or federal law that conflicts with the pertinent state rules or federal regulations to the chair of the agriculture and natural resources committee of the house of representatives and the chair of the energy, agriculture and natural resources committee of the senate prior to January 1 of the immediately succeeding year;

(2) Promulgate rules under subdivision (b)(1) for the establishment of standards for acceptable mining and reclamation of affected areas; provided, the rules are designed to achieve soil stabilization, control soil erosion, obliterate the scars of the mining operation, ensure quick revegetation, and ensure that the operation meets applicable soil and water quality standards;

(3) To the extent permitted by federal law and regulations, promulgate rules for the establishment of a process whereby the commissioner may grant a continuation of an existing permit under subdivision (a)(2)(A); and

(4) Hear appeals consistent with § 59-8-120 from mineral rights owners, permittees, operators, property owners, or other aggrieved persons who are or may be adversely affected by orders, determinations, rules, permit terms, or rulings of the commissioner that in any way affect surface coal mining and reclamation operations in this state.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-104. Additional powers of commissioner. [Contingent effective date, see Compiler's Notes.]

(a) In addition to the powers authorized to the commissioner under § 59-8-326, the commissioner may expend monies from the Tennessee surface mine reclamation fund, created by § 59-8-326, for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of surface coal mining practices, on eligible lands, if the commissioner finds that:

(1) An emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effect of surface coal mining practices.

(b)(1) The commissioner may enter upon any land where an emergency as

described in subsection (a) exists, and upon any other land, to have access to the land where the emergency exists; to restore, reclaim, abate, control, or prevent the adverse effects of surface coal mining practices; and to do all things necessary to protect the public health, safety, or general welfare.

(2) An entry made under this subsection (b) is an exercise of the police power, and is not an act of condemnation of property nor of trespass.

(3) The money expended for the commissioner's work and the benefits accruing to the land shall mitigate or offset any claim in or any action brought by any owner of any interest in the land for alleged damages by virtue of the entry. This subdivision (b)(3) does not create new rights of action or eliminate existing immunities.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-105. Coal exploration operations and activities. [Contingent effective date, see Compiler's Notes.]

(a)(1) Coal exploration operations that substantially disturb the natural land surface shall be conducted in accordance with exploration rules promulgated by the board under § 59-8-103(b)(1).

(2) The rules for coal exploration operations shall include:

(A) A requirement that prior to conducting any coal exploration, a person shall file a notice of intention to explore with the commissioner, which shall include a description of the exploration area and the period of supposed exploration; and

(B) A requirement for reclamation, in accordance with the performance standards in § 59-8-110, of all lands disturbed in exploration, including excavations, roads, and drill holes, and the removal of necessary facilities and equipment.

(3) Coal exploration operations shall not begin until:

(A) Twenty-one (21) days after the person files a notice of intention to explore with the commissioner; and

(B) The person filing the notice of intention to explore files with the commissioner a performance bond in the amount of five hundred dollars ($500) per acre disturbed by the coal exploration operations, payable to

this state and conditioned upon the faithful performance of reclamation in accordance with the notice of intention and the performance standards in § 59-8-110. The performance bond shall be released immediately upon inspection and completion of initial reclamation in accordance with the notice of intention and the performance standards in § 59-8-110, without regard to the time or other requirements in § 59-8-115. If the notice of intention to explore is deficient, the department shall inform the person who filed the notice of the deficiency within twenty-one (21) days of the date that the notice was filed with the department.

(b) Any person who conducts any coal exploration activities that substantially disturb the natural land surface in violation of this part is subject to the penalties in § 59-8-117.

(c) No person shall remove more than twenty-five (25) tons of coal under the authority of exploration activities without obtaining a coal exploration permit from the commissioner pursuant to rules promulgated by the board under § 59-8-103(b)(1).

(d) Information submitted to the department and the commissioner pursuant to this section as confidential trade secrets or privileged commercial or financial information, which relates to the competitive rights of the person or entity intended to explore the described area, shall not be available for public examination under title 10, chapter 7.

(e)(1) The commissioner shall notify a person who files a notice of intention to explore with the department that the proposed exploration shall not occur if the commissioner makes a written finding of fact and delivers the finding to the person who filed the notice of intention to explore during the twenty-one-day period after the notice of intention to explore is filed with the department that the proposed exploration will either:

(A) Be conducted on an environmentally fragile area and cause significant environmental harm; or

(B) Cause irreparable environmental harm.

(2)(A) If the commissioner does not permit exploration under subdivision (e)(1), the person filing the notice of intention to explore shall have the right to appeal the commissioner's decision to the board and the board shall hold a hearing within thirty (30) days of receipt of the appeal.

(B) The commissioner shall bear the burden of proof at an appeal hearing.

(C) The board shall render its decision concerning an appeal within ten (10) days of the hearing.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-

8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

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Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

Cross-References.

Confidentiality of public records, § 10-7-504.

59-8-106. Permits for surface coal mining and reclamation activities. [Contingent effective date, see Compiler's Notes.]

(a)(1) No person shall engage in surface coal mining and reclamation operations without having first obtained from the commissioner a permit for each surface mine. All permits issued under this part shall be issued for a term not to exceed five (5) years; however, if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for a specified longer term, the commissioner may issue a permit for the longer term. The commissioner shall issue a permit for a term longer than five (5) years only if the requirements of this part are satisfied, and only upon the submission by the applicant and approval by the commissioner of a bond, permit fee, and acreage fees for all acres permitted, a mining and reclamation plan, and any other information required by this part.

(2) A successor in interest to a permittee who submits a complete application for a new permit within thirty (30) days of succeeding to the interest, and who is able to obtain the bond coverage of the original permittee may, with the written approval of the commissioner, continue using the surface mining and reclamation plan of the original permittee until the successor's application for a new permit and plan is granted or denied, not to exceed the termination date of the original permit.

(b) The issuance of permits shall be subject to payment of the fee, posting the performance bond required by this part, and submission to the department of any information that is necessary to assure compliance with this part as prescribed in the rules promulgated by the board under § 59-8-103(b)(1).

(c) Information pertaining to coal seams, test borings, core samplings, or soil samples required by this section shall be made available to any person with an interest that is or may be adversely affected; however, information that pertains only to the analysis of the chemical and physical properties of the coal, except that information regarding any mineral or elemental content, which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record under title 10, chapter 7.

(d) Each applicant for a surface coal mining and reclamation operation permit shall submit a reclamation plan that meets the requirements of § 59-8-109, to the commissioner as part of the permit application. The board shall specify in rules promulgated under § 59-8-103(b)(1), the requirements for the contents, processing, and publication of an application.

(e) Within five (5) days of submitting an application for a coal surface mining permit to the commissioner, the applicant shall file a complete copy of

the application for public inspection with the register of deeds of the county, or an appropriate public office approved by the commissioner, in the locality where the mining is proposed to occur, except for information pertaining to the coal itself.

(f) Each applicant for a coal surface mining and reclamation permit shall submit, as part of the permit application, a blasting plan that outlines the procedures and standards by which the applicant will meet the requirements of this part.

(g) Each applicant for a coal surface mining permit shall submit, as part of the permit application, a certificate issued by an insurance company authorized to do business in this state, certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operation for which the permit is sought, or evidence that the applicant is self-insured. The public liability insurance policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface mining and reclamation operations, including the use of explosives. The policy shall be maintained in full force and effect during the terms of the permit or any renewal period, including the length of all reclamation operations.

(h) The holder of a valid permit issued under this part may apply to continue the operation beyond the original permit expiration date by submitting a renewal application at least one hundred twenty (120) days prior to the expiration date of the permit. The time length of a permit renewal shall not exceed the time length of the original permit.

(i) In any case when the private mineral estate has been severed from the private surface estate, the applicant for a permit shall submit one (1) of the following to the commissioner:

(1) The written consent of the surface owner to the extraction of coal by surface mining methods;

(2) A copy of a conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with the laws of this state. Nothing in this part authorizes the commissioner or board to adjudicate property right disputes.

(j)(1) Any operator who is a permittee may subcontract any part, or all, of the mining of the lands covered by the permit to a subcontractor if the subcontractor is not in violation of this part with regard to the subcontractor's own operations, or if the subcontractor submits proof that any violation by the subcontractor has been corrected or is in the process of being corrected to the satisfaction of the commissioner, department, or agency that has jurisdiction over the violation.

(2) If, after an opportunity for a hearing, the commissioner makes a finding that the subcontractor controls or has controlled mining operations with a demonstrated pattern of knowing violations of this part of a nature and duration, or with resulting irreparable damage to the environment that indicates an intent not to comply with this part, the operator shall not subcontract any part of the mining operation to the subcontractor.

(k) An applicant for a permit shall publish an advertisement in a newspaper of general circulation in the locality of the proposed site, which identifies the ownership, the exact location, and boundaries of the proposed site specifically enough that the proposed operation can be readily located by nearby residents, and the location of the place where the application is available for public inspection. The advertisement shall be published at least once a week for four (4) successive weeks after the filing of an administratively complete application and shall appear in the form and contain the information that is required by the rules promulgated by the board under § 59-8-103(b)(1).

(l) The board may, by rules promulgated under § 59-8-103(b)(1), set criteria for obtaining a permit exemption for the following:

(1) Extraction of coal as an incidental part of federal, state, or local government financed highway or other construction; or

(2) Construction operations involving less than one (1) acre in disturbance where coal removal is incidental to the purpose of the construction and not inconsistent with this part.

(m) The commissioner shall make an on-the-ground inspection of a proposed affected area before a new permit is issued; however, an inspection shall not be required for the renewal of any permit.

(n) The applicant shall submit to the commissioner the name, permanent address, and any temporary address to be used in connection with the operation covered by the permit, in addition to the telephone number of any subcontractor to be used in the mining operation.

(o) The permit area shall be readily identifiable by appropriate markers on the site.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

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Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

Cross-References.

Confidentiality of public records, § 10-7-504.

59-8-107. Permit and acreage fees. [Contingent effective date, see Compiler's Notes.]

(a)(1)(A) Subject to the exemptions in subsection (b), every application for a surface coal mining and reclamation operation permit or an underground

coal mining permit shall be accompanied by a basic application fee and an acreage fee.

(B) The basic application fee shall be:

(i) For a new permit, three thousand eight hundred fifty dollars ($3,850);

(ii) For a permit revision that proposes significant alterations, two thousand dollars ($2,000);

(iii) For a permit revision that does not propose significant alterations, seven hundred fifty dollars ($750);

(iv) For a permit renewal, five hundred dollars ($500);

(v) For a successor's permit, three hundred fifty dollars ($350); and

(vi) For an exploration permit, one thousand dollars ($1,000).

(C) The acreage fee shall be paid annually as prescribed in rules promulgated by the board under § 59-8-103(b)(1). The amount of the acreage fee shall be:

(i) For a site that has not been reclaimed, forty dollars ($40.00) per permitted acre; and

(ii) For a site that has been reclaimed, twenty dollars ($20.00) per permitted acre.

(2)(A)(i) The fee for an amendment of a coal mining permit shall be two hundred fifty dollars ($250).

(ii) The fee for an amendment of a coal exploration permit shall be one hundred fifty dollars ($150).

(B) If the amendment increases the acreage permitted, the acreage fee for the increase in acreage shall be paid at the time of application.

(C) If the amendment decreases the acreage permitted, the refund for the acreage deleted shall be paid by this state to the applicant when the amendment is granted.

(b) Local governments and state agencies are exempt from permit and acreage fees.

(c) All fees collected pursuant to this section shall be deposited in the coal mining protection fund, created in § 59-8-132.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-108. Performance bond or security requirements. [Contingent effective date, see Compiler's Notes.]

(a)(1) After a permit has been approved, but prior to issuance of the permit, the applicant shall file with the commissioner, on a form prescribed and furnished by the commissioner, a bond for performance payable to this state and conditioned on the faithful performance of this part and the permit. The bond shall cover the area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area, the operator shall file with the commissioner an additional bond or bonds to cover those increments in accordance with this section.

(2) Bonds shall be executed by the operator and a corporate surety who is approved by the commissioner and properly authorized to act as a surety and licensed to do business in this state; however, the operator may elect to deposit cash or negotiable certificates of deposit assigned irrevocably to this state, negotiable United States treasury bonds, or negotiable general obligation municipal or corporate bonds that have the highest rating assigned by Moody's or Standard & Poor's rating services, with the state treasurer in lieu of a bond executed by a corporate surety.

(3) The state treasurer shall receive and hold any security that is deposited in lieu of a performance bond in the name of this state, in trust, for the purposes for which the deposit is made, and shall at all times be responsible for the custody and safekeeping of the deposit. The operator making the deposit may demand and receive from the state treasurer, on the written order of the commissioner, all or any portion of any securities deposited in lieu of a performance bond upon depositing with the state treasurer other negotiable securities of the classes specified in this subsection (a) having a market value at least equal to the sum of the bond, and also to demand and recover the interest income from those securities as it becomes due; however, the state treasurer, at the request of the operator, shall convert the securities into other negotiable securities of the classes specified in this subsection (a) as may be designated by the operator.

(4) The commissioner may accept the operator's performance bond without a separate surety when the operator demonstrates to the satisfaction of the commissioner the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond the required amount.

(b)(1) The amount of the performance bond, cash deposit, or marketable value of the securities deposited by the operator shall be determined by the commissioner and conditioned upon the faithful performance of this part. Liability under each bond shall be continuous until the reclamation requirements of this part have been fulfilled.

(2) The amount of bond required for each bonded area shall be sufficient, as determined by the commissioner, to assure the completion of the reclamation plan as if the work must be performed by the commissioner in the event of bond forfeiture. In no case shall the bond for a mining permit be less

than ten thousand dollars ($10,000).

(3) The amount of the bond or deposit required and the terms of each acceptance of the operator's bond shall be adjusted by the commissioner from time to time as affected land acreages are amended and increased or decreased, as plans are changed, or when the cost of future reclamation changes.

(4) Bond amounts shall depend upon the reclamation requirements of the approved permit and shall reflect the probable difficulty of reclamation, giving consideration to factors such as topography; geology of the site; hydrology; revegetation potential; the permittee's, operator's, and subcontractor's past performance records; and whether or not the permittee, operator, and any subcontractors have operated in this state less than three (3) years.

(c) Local governmental entities and state agencies may execute their own bonds as surety.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-109. Mining and reclamation plan. [Contingent effective date, see Compiler's Notes.]

(a) Each permit application shall include a mining and reclamation plan that contains the information that the board, by rules promulgated under § 59-8-103(b)(1), requires as necessary to demonstrate that reclamation required by this part can be accomplished.

(b) The mining and reclamation plan may be changed with the commissioner's approval, at any time upon application of the permittee, to take account of changes in conditions or to correct any previous oversight. The commissioner may also order a change in the mining or reclamation plan for the same reasons.

(c) Any information required by this section that is not on file pursuant to this chapter shall be held in confidence by the commissioner and not available for public inspection under title 10, chapter 7.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-110. Performance standards. [Contingent effective date, see Compiler's Notes.]

(a) Any permit issued under this part to conduct surface coal mining and reclamation operations shall require the operations to meet all applicable performance standards of this part.

(b) General performance standards as prescribed in rules promulgated by the board under § 59-8-103(b)(1) shall apply to all surface coal mining and reclamation operations.

(c) Steep slope surface coal mining and reclamation operations are subject to additional performance standards as prescribed in rules promulgated by the board under § 59-8-103(b)(1).

(d)(1) The commissioner may grant variances for the purposes set forth in subdivision (d)(2).

(2) If an applicant meets the requirements of subdivisions (d)(3) and (4), the commissioner may grant a variance from any requirement to restore the area to the approximate original contour if the owner of the surface knowingly requests in writing, as a part of the permit application, that a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities.

(3)(A) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land shall constitute an equal or better economic or public use.

(B) The backfilling and regrading shall be designed and certified by a registered engineer or a licensed professional geologist in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(C) After approval by the commissioner, the watershed of the affected land shall be improved.

(4) In granting a variance under this subsection (d), the commissioner shall only require that amount of spoil placed off the mine bench as is necessary to achieve the planned post-mining land use, that the spoil

retained on the bench is designed to be stable, that all spoil placement off the mine bench comply with subsection (b), and that all other requirements of this part are met.

(5) The board shall promulgate specific rules under § 59-8-103(b)(1) to govern the granting of variances in accordance with this subsection (d), and may impose such additional requirements as the board deems necessary.

(6) All variances granted under this subsection (d) shall be reviewed within three (3) years of the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

(e) The commissioner may, under rules promulgated by the board under § 59-8-103(b)(1) and approved by the secretary, permit variances or waivers from the performance standards imposed under this section if that action would allow for reclamation consistent with the requirements of this part and compatible with areas adjacent to the permitted area.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-111. Permits for underground coal mining. [Contingent effective date, see Compiler's Notes.]

(a) No person shall conduct underground coal mining operations until that person obtains a permit limiting and controlling the surface effects of the mining, pays the fees required by § 59-8-107, and posts a performance bond under § 59-8-108 conditioned on satisfactory reclamation of the surface disturbances of the underground coal mining operations.

(b) The board shall promulgate rules under § 59-8-103(b)(1), that are designed to minimize the surface effects of underground coal mining operations; however, in adopting rules, the board shall consider the distinct difference between surface coal mining and underground coal mining. The rules shall not conflict with nor supersede the federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. § 801, et seq.), nor any regulation issued pursuant to that act.

(c) Each permit issued under this part and relating to underground coal

mining shall require the permittee and operator to meet the standards that the board prescribes by rules promulgated under § 59-8-103(b)(1).

(d) In order to protect the stability of the land, the commissioner shall suspend underground coal mining under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or permanent streams, if the commissioner finds an imminent danger to inhabitants of the urbanized areas, cities, towns, and communities.

(e) The requirements of this part relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall apply to surface operations and surface impacts incidental to an underground coal mine with modifications to permit application requirements, permit approval or denial procedures, and bond requirements that are necessary to accommodate the distinct difference between surface coal mining and underground coal mining. The board shall promulgate rules for the modifications for underground coal mines under § 59-8-103(b)(1).

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-112. Administratively complete permit applications — Objections — Informal conferences — Approval or disapproval — Approval or disapproval of mining and reclamation plan — Termination of permit —Revision of permit. [Contingent effective date, see Compiler's Notes.]

(a)(1)(A) Within thirty (30) business days of the date of receipt of an application for a permit to conduct surface coal mining and reclamation operations, the commissioner shall notify the applicant in writing, stating whether or not the application is administratively complete. If the application is not administratively complete, the commissioner shall state in the written notice why the application is incomplete and the specific requirements to make the application administratively complete.

(B) Upon discovery of deficiencies in the application, the department shall promptly notify the applicant in writing and allow the applicant to temporarily withdraw the application for the purpose of correcting the deficiencies. Temporary withdrawal periods shall not be counted against

the time available to the department for consideration of the application.

(2) The commissioner shall be deemed in receipt of an administratively complete permit application when the earliest of the following events occur:

(A) The permit applicant is notified that the application is administratively complete;

(B) The commissioner's failure to issue acknowledgment of receipt of an administratively complete application to the permit applicant as provided in this section within five (5) business days of receipt by the commissioner of the application; or

(C) Receipt by the commissioner of the specific requirements identified by the commissioner to make the application administratively complete.

(3) Within forty-five (45) business days of the receipt of an administratively complete application, the commissioner shall complete the review of the permit application for technical completeness and notify the permit applicant in writing of any technical deficiencies in the permit application.

(4) Upon receipt of a permit application, the commissioner shall:

(A) Notify applicable local governmental bodies, planning agencies, the county tax assessor, and water and waste-water treatment authorities or companies whose territorial jurisdiction includes the geographic location of the proposed coal surface mine, of the applicant's intent to surface mine a specific tract; and

(B) Inform the entities listed in subdivision (a)(4)(A) where a copy of the proposed mining and reclamation plan may be inspected to allow the entities to submit written comments within a reasonable period of time, established by the board, but not less than thirty (30) days, concerning the effects of the proposed operation on the environment within their areas of responsibility.

(5) Upon the close of the comment period described in subdivision (a)(4)(B), the commissioner shall transmit the comments to the applicant and make the comments available for public inspection at the same location as the mining permit applications.

(b)(1) Any person may see and review the entire application, except for information that is classified as confidential in this part or § 10-7-504, and any aggrieved person, or the officer or head of any federal, state, or local governmental agency or authority may file written objections to the application for a permit within thirty (30) days after the last publication of the newspaper notice required by § 59-8-106(k).

(2) Upon receipt of any written objections, the commissioner shall transmit the objections to the applicant and make the objections available for public inspection. If any written objections are filed and an informal conference is requested, the commissioner shall hold an informal conference in the locality where the proposed surface coal mining and reclamation operation would be located within forty-five (45) days of the receipt of the request. The commissioner shall advertise the date, time, and location of the informal conference in a newspaper of general circulation that serves the geographic area where the proposed surface coal mining and reclamation operation would be located at least two (2) weeks before the scheduled

informal conference date. Upon request by a party to an informal conference, the commissioner may arrange with the applicant access to the proposed mining area for the purpose of gathering information relevant to the proceeding.

(3) An electronic or stenographic record shall be made of the informal conference proceedings, unless waived by all parties. The commissioner shall maintain the record and make the record accessible to the parties until final release of the applicant's performance bond.

(4) If all parties requesting the informal conference stipulate to an agreement prior to the time of the informal conference and withdraw their request, the informal conference need not be held.

(c) If an informal conference is held under subsection (b), the commissioner shall issue and furnish to the applicant and other persons who are parties to the administrative proceedings the commissioner's written findings, granting or denying the permit in whole or in part, and stating the reasons for the grant or denial, within sixty (60) business days of the informal conference, and within one hundred fifty (150) business days of the receipt of an administratively complete application.

(d) If an informal conference is not held under subsection (b), the commissioner shall notify the applicant for a permit within sixty (60) business days after the receipt of a technically complete new amendment, or renewal application, but not before thirty (30) business days, whether the application has been approved or disapproved, in whole or in part.

(e)(1) If the application is approved, the permit shall be issued upon the posting of the required bond. Within ten (10) days after the granting of a permit, the commissioner shall notify the local governmental officials for the political subdivision where the area of land to be affected by the operation is located that a permit has been issued and shall describe the location of the land.

(2) If the application is denied, the commissioner shall state the specific reasons for the denial in the notification.

(3) Any aggrieved person may appeal the commissioner's decision to grant, deny, or modify any permit application, to the board under § 59-8-120.

(f)(1) An applicant may submit a complete application containing a mining and reclamation plan and maps in which the mining and reclamation work is separated into clearly identified and defined increments, and may request incremental permitting and bonding. The newspaper notice shall clearly state the plan, sequence, and timetable of mining.

(2) The commissioner shall evaluate the completed application and, if the commissioner approves the application, shall issue a written letter of approval of the mining and reclamation plan to the applicant, and, upon the posting of a bond for the first increment, shall issue a permit for the first increment.

(3) A permittee shall notify the commissioner in writing at least sixty (60) days before beginning operations on the second or a subsequent increment. The commissioner shall then inspect the operation to determine if the operation is in compliance with this part, permit requirements, and the

original approved mining and reclamation plan. After inspection, approval, and the necessary bond has been posted, the commissioner shall adjust the permit to include the second or a subsequent increment, without the need for another permit application, newspaper notice, or hearing.

(4) The commissioner shall not require revision of an approved mining and reclamation plan or withdraw a letter of approval unless the commissioner finds that the present plan is not working or is inadequate to protect the public and the environment.

(g) The commissioner shall not approve a permit or revision application unless the application affirmatively demonstrates, and the commissioner makes a written finding based on the information in the application or information otherwise available that is documented in the approval and made available to the applicant, that:

(1) The permit application is accurate and complete and that all the requirements of this part are met;

(2) The applicant has demonstrated that reclamation, as required by this part, can be accomplished under the reclamation plan contained in the permit application;

(3) The commissioner has assessed the probable cumulative impact of all anticipated coal surface mining in the area on the hydrologic balance, and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(4) The area proposed to be mined for coal is not included within an area designated unsuitable for surface coal mining and reclamation pursuant to § 59-8-125, or is not within an area under study for that designation in an administrative proceeding commenced pursuant to § 59-8-125, unless the applicant demonstrates that, prior to January 4, 1977, the applicant made substantial legal and financial commitments in relation to a mining operation for which the applicant is applying for a permit.

(h)(1) When a schedule of violations, cease and desist orders, or other information available to the commissioner indicates that any surface coal mining and reclamation operation owned or controlled by the applicant, operator, or subcontractor is currently in violation of this part, the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201, et seq.), or any law, rule, or regulation of the United States, or of any department or agency in the United States pertaining to air or water environmental protection, the commissioner shall not issue the permit until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the commissioner, department, or agency that has jurisdiction over the violation.

(2) The commissioner shall not issue a permit to an applicant after a finding by the commissioner, after opportunity for a hearing pursuant to § 59-8-120, that the applicant, operator, or subcontractor specified in the application controls or has controlled mining operations with a demonstrated pattern of violations of this part of a nature and duration or with resulting irreparable damage to the environment as to indicate an intent not to comply with this part.

(i)(1) In addition to finding the application in compliance with this section, if an area proposed to be mined for coal contains prime farmland, the

commissioner shall, after consultation with and the concurrence of, the United States secretary of agriculture, and pursuant to the rules promulgated by the board under § 59-8-103(b)(1), grant a permit to surface mine for coal on prime farmland if the commissioner finds in writing that the applicant has the technological capability to restore the mined area within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in this part.

(2) Nothing in this subsection (i) applies to any permit issued prior to August 3, 1977, or to any revisions or renewals to those permits, or to any existing surface coal mining operations for which a permit was issued prior to August 3, 1977.

(j)(1) A permit shall terminate if the permittee has not commenced the surface coal mining and reclamation operations covered by the permit within three (3) years of the date of issuance of the permit; however, the commissioner may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding commencement of operations threatening substantial economic loss to the permittee, or reasons beyond the control and without the fault or negligence of the permittee.

(2) In the case of a coal lease issued under the federal Mineral Leasing Act (30 U.S.C. § 181, et seq.), extensions of time may not extend beyond the period allowed for diligent development in accordance with 30 U.S.C. § 187.

(3) In the case of coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(k)(1) Any valid permit issued pursuant to this part may be renewed upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal, and a renewal shall be issued; provided, that on application for renewal the burden shall be on the opponents of renewal, subsequent to fulfillment of the public notice requirements of § 59-8-106. A permit renewal shall be granted unless the commissioner makes written findings that:

(A) The terms and conditions of the existing permit are not being satisfactorily met;

(B) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this part;

(C) The renewal requested substantially jeopardizes the permittee's continuing responsibility on existing permit areas;

(D) The permittee has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application, as well as any additional bond the commissioner might require under § 59-8-108; or

(E) Any additional revised or updated information required by the commissioner has not been provided. Prior to the approval of any permit renewal, the commissioner shall provide notice to the appropriate public authorities.

(2) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit that addresses any new land areas is subject to the full standards applicable to new applications under this part.

(3) The term of a permit renewal shall not exceed the term of the original permit. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the current permit.

(l) On or after the effective date of this part [see the Compiler's Notes], and subject to valid existing rights, no surface coal mining and reclamation operations, except those which existed on August 3, 1977, are permitted:

(1) On any lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under 16 U.S.C. § 1276(a), and national recreation areas designated by an act of congress;

(2) On any federal lands within the boundaries of any national forest; however, surface coal mining and reclamation operations may be permitted if the secretary finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining and reclamation operations, and the surface operations and impacts are incident to an underground coal mine;

(3) Which will adversely affect any publicly owned park or places included in the National Register of Historic Sites, unless approved jointly by the commissioner and the federal, state, or local agency with jurisdiction over the park or the historic site;

(4) Within one hundred feet (100′) of the outside right-of-way line of any public road, except where mine access roads or haulage roads join a right-of-way line; however, the commissioner may permit the roads to be relocated or the area affected to lie within one hundred feet (100′) of a road, if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the affected landowners are protected;

(5) Within three hundred feet (300′) from any occupied dwelling, unless waived by the owner, nor within three hundred feet (300′) of any public building, school, church, community, institutional building, or public park; or

(6) Within one hundred feet (100′) of a cemetery.

(m)(1) A petition for permit appeal may be filed by:

(A) The permit applicant; or

(B) By any aggrieved person who:

(i) Provided written objections during the time period specified in subsection (b); or

(ii) Provided written or oral objections at an informal conference, whose appeal is based upon any of the issues that were provided to the commissioner in the written objections or in testimony at the informal conference on the permit application.

(2) For permits for which the department gives public notice of a draft permit, any permit applicant or aggrieved person may base a permit appeal

on any material change to conditions in the final permit from those in the draft, unless the material change has been subject to additional opportunity for public comment.

(3) Any petition for permit appeal under this subsection (m) shall be filed with the commissioner within thirty (30) days after public notice of the commissioner's decision to issue or deny the permit.

(4) Notwithstanding § 4-5-223 or any other law to the contrary, this subsection (m) is the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a permit. When a petition is timely filed, the procedure for conducting the contested case shall be in accordance with § 59-8-120.

(n) As used in this section, "business day" means any day other than a Saturday, Sunday, or legal holiday.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

Cross-References.

Confidentiality of public records, § 10-7-504.

59-8-113. Revision of permit — Transfer, assignment, or sale prohibited without approval. [Contingent effective date, see Compiler's Notes.]

(a)(1) During the term of the permit, the permittee may submit to the commissioner an application for a revision of the permit, together with a revised reclamation plan. The commissioner may also require the revision of a permit or a mining or reclamation plan if the present plan is inadequate to protect the public and the environment consistent with this part.

(2) The commissioner shall not approve an application for a revision of a permit unless the commissioner finds that the revision meets all the standards of this part and the board's rules. The board shall establish, by rules promulgated under § 59-8-103(b)(1), guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, apply. Any revisions that propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

(3)(A) The permittee may modify the approved mining and reclamation plan by submitting a modification of the mining and reclamation plan to the department for approval if:

(i) The surface coal mining operations or reclamation operations actually conducted by the permittee or operator meet the standards of this part and the board's rules, but do not conform with the mining and reclamation plan on file with the department; and

(ii) The deviations do not constitute a significant departure from the method of conduct of surface coal mining and reclamation operations approved by the commissioner.

(B) The commissioner shall approve the modification upon finding that the modification meets all the standards of this part and the board's rules.

(b) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this part shall be made without the commissioner's written approval.

(c) In addition to any other review required by federal law or regulations, the commissioner shall, within one (1) year after the effective date of this part, review outstanding surface coal mining and reclamation operation permits. The commissioner may require reasonable revision or modification of the permit provisions during the term of the permit; provided, that the revision or modification is based upon a written finding and subject to notice and hearing requirements and the board's rules, and may be appealed as provided in § 59-8-120.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-114. Inspection of surface coal mining and reclamation operations — Sign — Violations — Records and reports — Monitoring data collection and analysis. [Contingent effective date, see Compiler's Notes.]

(a) The commissioner shall make inspections of any surface coal mining and reclamation operation that are necessary to determine whether the operation is in compliance with this part, and all rules promulgated and permits issued,

pursuant to this part, and has a right of entry to, upon, or through any surface coal mining and reclamation operation in order to conduct the inspections.

(b) The commissioner's inspections shall:

(1) Occur on an irregular basis, averaging not less than one (1) partial inspection per month and one (1) complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit;

(2) Occur without prior notice to the permittee or the permittee's agents or employees, except as necessary for on-site meetings with the permittee or operator; and

(3) Include the filing of inspection reports adequate to enforce the requirements of, and to carry out the terms and purposes of, this part.

(c) Each permittee shall conspicuously maintain at the entrances to each surface coal mining and reclamation operation, a clearly visible sign that states the name, business address, and telephone number of the permittee and the permit number of the surface coal mining and reclamation operation.

(d)(1) If an inspector detects a violation of this part, the inspector shall immediately inform the operator, permittee, or person in writing and make a written report of the violation to the commissioner. The written communication and report shall not be considered a complaint issued pursuant to § 59-8-116; however, a complaint may arise from violations contained in the communication and report.

(2) Each inspector shall notify the operator or the person in charge of the mining or reclamation operation of the inspector's presence on the permitted area, unless the operator or person in charge of the operation is not reasonably available on the site during the inspection. The operator or the person in charge of the operation, or the operator's or person's designee, has the right to accompany the inspector during the inspection of the permitted area.

(e) The board shall require, by rules promulgated under § 59-8-103(b)(1), that all permittees:

(1) Establish and maintain appropriate records;

(2) Make monthly reports to the commissioner;

(3) Install, use, and maintain any necessary monitoring equipment or methods;

(4) Evaluate results in accordance with the methods, locations, intervals, and manner that the board prescribes; and

(5) Provide other information relative to surface coal mining and reclamation operations that the board deems reasonable and necessary.

(f) For surface coal mining and reclamation operations that remove or disturb strata serving as aquifers, which significantly insure hydrologic balance or water use, either on or off the mining site, the commissioner shall specify:

(1) Monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence;

(2) Monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the deepest coal seam to be mined;

(3) Records of well logs and borehole data to be maintained; and

(4) Monitoring sites to record precipitation.

(g) The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the board to ensure the reliability and validity of the data collection and analysis or findings derived from the data collection and analysis.

(h) The authorized representatives of the commissioner, without advance notice, and upon presentation of appropriate credentials:

(1) Have the right of entry to, upon, or through any surface coal mining and reclamation operation or any premises in which any records required to be maintained under subsection (f) or (g) are located; and

(2) May, at reasonable times, but without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required under this part.

(i) The commissioner shall make copies of any records, reports, inspection materials, or information obtained under this part immediately available to the public at convenient locations in the area of the mining.

(j)(1) Whenever, on the basis of any information available to the commissioner, including receipt of information from any person, the commissioner has reason to believe that any operator, permittee, or person is in violation of this part or a rule promulgated by the board, or any permit condition, or complaint or cease and desist order issued under this part, the commissioner shall investigate, and, if the violation is confirmed, take appropriate action within ten (10) days; however, the commissioner shall take appropriate action immediately if proof is provided that an imminent danger of significant environmental harm exists.

(2) The identity of any person supplying information shall remain confidential, if requested by the person.

(3) When an inspection results from information provided to the commissioner by any person, the commissioner shall notify the person when the inspection is proposed to be carried out and the person shall be allowed to accompany the inspector during the inspection.

(4) Within ten (10) days of the inspection, or fifteen (15) days of the receipt of a complaint if there is no inspection, the commissioner shall send a complete report to the person who reported the information.

(5) Any person dissatisfied with the action of the commissioner may appeal as provided in § 59-8-120.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the

regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-115. Request for release of all or part of performance bond or deposit. [Contingent effective date, see Compiler's Notes.]

(a)(1) A permittee may file with the commissioner a request for the release of all or part of a performance bond or deposit. A request for release of all or part of a performance bond or deposit shall indicate the location of the area and number of acres affected by the operation, the location of the area and number of acres of grading and revegetation accomplished by the permittee, and other information as the board may require by rules. If the request and the commissioner's inspection of the area affected show that the permittee is entitled to release of all or any portion of the bond or deposit, the commissioner shall approve the request and release all or a portion of the permittee's bond or deposit, as appropriate under this part.

(2) If the commissioner does not approve the request, the bond or deposit shall not be released until the permittee corrects the deficiencies found by the commissioner.

(3) A bond may be released on a portion of a permitted area if the permittee files a request containing the required information, the commissioner approves the request, and an inspection of the area affected shows compliance with the reclamation requirements of this part.

(b)(1) Within thirty (30) days after an application for bond or deposit release has been initiated and filed with the commissioner, the permittee shall submit a copy of an advertisement placed at least once a week for four (4) successive weeks in a newspaper of general circulation in the locality of the surface coal mining and reclamation operation. The advertisement is considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit number and the date that the permit was approved, the amount of the bond filed and the portion of the bond sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as the results relate to the operator's approved plan.

(2) In addition, as part of any bond release application, the permittee shall submit copies of letters that the operator has sent to adjoining landowners, local government bodies, planning agencies, and sewage and water treatment authorities or water companies, if applicable, in the locality in which the surface coal mining and reclamation operations took place, notifying them of the operator's intention to seek partial or total release from the bond.

(c) Upon receipt of any notification and request under this section, the commissioner shall, within thirty (30) days, inspect and evaluate the reclamation work involved. The evaluation shall consider, but not be limited to, the degree of difficulty to complete or evaluate any remaining reclamation, whether pollution or diminution of surface or subsurface water is occurring,

the probability of continuation of the pollution or diminution, and the estimated cost of abating or correcting it. The commissioner shall notify the permittee in writing of the commissioner's decision to release or not to release all or part of the performance bond or deposit within sixty (60) days from the filing of the request, if no public hearing is held, and if a public hearing is held, within thirty (30) days after the hearing date. The commissioner shall send a copy of any notification of a decision not to release all or part of a bond to the permittee's surety. The commissioner's decision may be appealed pursuant to subsection (i).

(d)(1) The commissioner may release all or part of the bond or deposit when the commissioner is satisfied that the reclamation covered by the bond or deposit, or portion of the bond or deposit, has been accomplished as required by this part. The remaining bond shall be sufficient to satisfy all final reclamation requirements.

(2) When a permittee performs the backfilling, regrading, topsoiling, drainage control, site preparation, spoil treatments, mulching, and initial planting of the vegetative cover in accordance with the approved plan as noted on an annual report, the commissioner may issue to the permittee and the permittee's surety a partial release of sixty percent (60%) of the surety bond for each acre of the affected area with respect to which the approved reclamation plan has been carried out. The remaining bond shall be held for at least five (5) years after the last year of augmented seeding, fertilizing, irrigation, or other work to assure that all reclamation requirements have been successfully met. A portion of the remaining bond may be released prior to the elapsing of five (5) years in accordance with board rules.

(3) The commissioner shall retain an amount of the bond for the affected area, which would be sufficient for a third party to cover the cost of all remaining reclamation work and reestablishing vegetation. The remainder of the bond or deposit shall not be released under subdivision (d)(2) so long as the disturbed lands are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by this part or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined prime farmlands of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to this part. When a silt dam or impoundment approved as part of the mining or reclamation plan is to be retained as a permanent impoundment pursuant to § 59-8-110, the portion of the bond may be released under subdivision (d)(1) so long as the silt dam or impoundment meets the post-mining land use criteria and water quality and quantity concerns, and provisions for sound future maintenance by the permittee or the landowner have been made with the commissioner.

(4) The permittee shall not be denied access to the mining site for the purposes of completing or maintaining reclamation work because of the expiration of the permittee's lease, until the permittee's entire performance bond has been released.

(e) If the commissioner disapproves the application for release of all or part of the bond, the commissioner shall notify the permittee and the permittee's surety, stating the reasons for disapproval and recommending specific correc-

tive actions necessary to secure the release, and allowing the permittee an opportunity for a hearing. The notice and recommendation shall be handed to the permittee in person, or sent by certified mail, return receipt requested, addressed to the permanent address shown on the application for a permit. The notice shall specify how the permittee has failed to comply with this part or rules promulgated pursuant to this part.

(f) When any application for total or partial bond release is filed with the commissioner, the commissioner shall notify the chief executive officer of the county in which the surface coal mining and reclamation operation is located by certified mail at least thirty (30) days prior to the release of all or a portion of the bond.

(g) Any person with a valid legal interest, which might be adversely affected by release of all or a portion of the bond, or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or development and enforcement of environmental standards with respect to such operations, has the right to file written objections to the proposed release from bond to the commissioner within thirty (30) days after the last publication of the newspaper notice provided for in subsection (b). If one (1) or more written objections to a release of bond is filed, and a hearing requested, the commissioner shall inform all the interested parties of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release, or in Nashville, at the option of the objector, within thirty (30) days of the request for a hearing. The commissioner shall advertise the date, time, and location of the public hearing in a newspaper of general circulation in the locality for two (2) consecutive weeks.

(h) Without prejudice to the rights of the objectors or the applicant, or the responsibilities of the commissioner, the commissioner may convene an informal conference as provided for in this part to resolve written objections.

(i)(1) A petition for appeal may be filed by:

(A) The applicant for release; or

(B) By any aggrieved person who:

(i) Provided written objections during the time period specified in subsection (g); or

(ii) Provided written or oral objections at the hearing or an informal conference whose appeal is based upon any of the issues that were provided to the commissioner in the written objections or in testimony at the hearing or an informal conference on the application.

(2) For permits for which the department gives public notice of a draft of a bond release, any applicant or aggrieved person may base an appeal on any material change to conditions in the final release from those in the draft, unless the material change has been subject to additional opportunity for public comment.

(3) Any petition for appeal under this subsection (i) shall be filed with the commissioner within thirty (30) days after public notice of the commissioner's decision to grant or deny the release.

(4) Notwithstanding § 4-5-223 or any other law to the contrary, this subsection (i) is the exclusive means for obtaining administrative review of

the commissioner's issuance or denial of a bond release. When a petition to appeal the commissioner's issuance or denial of a bond release is timely filed, the procedure for conducting the contested case shall be in accordance with § 59-8-120.

History.
Acts 2018, ch. 839, § 1.

Compiler's Notes.
Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.
Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-116. Complaints — Cease and desist orders. [Contingent effective date, see Compiler's Notes.]

(a)(1) If the commissioner determines that any operator, permittee, or person is in violation of this part, the board's rules, or any permit condition required by this part, or order issued pursuant to this part, the commissioner shall issue a complaint to the operator, permittee, or person fixing a reasonable time, but not more than ninety (90) days, for the abatement of the violation. The board may promulgate rules under § 59-8-103(b)(1) that allow for reasonable extensions beyond ninety (90) days when it is not feasible to abate the violation within that time; however, when the abatement time permitted is in excess of ninety (90) days, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(2)(A) If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the commissioner, the commissioner finds that the violation has not been abated and that the operator, permittee, or person has not reached an agreement with the commissioner, the commissioner shall immediately order a cessation of surface coal mining and reclamation operations or the portion of the operations relevant to the violation.

(B) A cease and desist order remains in effect until the commissioner determines that the violation has been abated, or until modified, vacated, or terminated by the commissioner under subsection (d).

(C) In the cease and desist order issued under this subsection (a), the commissioner shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the cease and desist order.

(D) If a cease and desist order is not complied with, or the operator, permittee, or person refuses or fails to correct the violation, the permit may be revoked and the performance bond shall then be forfeited to the commissioner. When a bond is forfeited, the commissioner shall give notice to the attorney general and reporter, who shall collect the forfeiture.

(b)(1) If the commissioner determines that any condition or practice exists, or that the operator, permittee, or person is in violation of this part, the board's rules, or any permit condition required by this part, or order issued pursuant to this part, which condition, practice, or violation also creates an imminent danger to the health and safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the commissioner shall immediately order a cessation of surface coal mining and reclamation operations or the portion of the operations relevant to the condition, practice, or violation. The cease and desist order remains in effect until the commissioner determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the commissioner under subsection (d). If the commissioner finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of operations, shall not completely abate the imminent danger to the health and safety of the public or the significant, imminent environmental harm to land, air, or water resources, then the commissioner shall, in addition to issuing a cease and desist order, impose affirmative obligations on the operator requiring the operator to take whatever steps the commissioner deems necessary to abate the imminent danger or the significant environmental harm.

(2) The commissioner shall also issue an immediate cease and desist order to any operator mining without a valid permit or mining an area not covered by a valid permit.

(c)(1) The commissioner shall issue cease and desist orders, or suspend or revoke permits, for a pattern of violations caused by an unwarranted failure to comply with this part, the board's rules, or a permit or order, after issuing a show cause order and offering an opportunity for a public hearing of which all interested parties shall be notified. If the operator, permittee, or person fails to show cause as to why the permit should not be suspended or revoked, the commissioner shall suspend or revoke the permit. A written or electronic record shall be kept of any show cause hearing by the commissioner and the hearing shall be subject to title 4, chapter 5, part 3. Within sixty (60) days following a show cause hearing, the commissioner shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the commissioner's findings, concerning suspension or revocation of the permit. Appeals of the commissioner's decision shall be pursuant to § 59-8-120.

(2) If the permit is revoked, then mining shall immediately cease and reclamation shall be completed within a period specified by the commissioner, or the commissioner shall declare the performance bond for the operation to be forfeited. When a bond is forfeited, the commissioner shall give notice to the attorney general and reporter, who shall collect the forfeiture.

(d)(1) Complaints and cease and desist orders shall set forth with reason-

able specificity:

(A) The nature of the violation;

(B) The remedial action required;

(C) The period of time established for abatement; and

(D) A reasonable description of the portion of the surface coal mining and reclamation operation to which the complaint or order applies.

(2) The commissioner shall deliver each complaint or cease and desist order issued under this section by:

(A) Personal service upon the operator, permittee, or person; or

(B) Certified mail return receipt requested, when the complaint or cease and desist order is mailed to the operator, permittee, or person at the address shown in the permit application, to the agent for service of process for the operator, permittee, or person at the address shown in the permit application, to the surety's address as shown on the bond document filed with the permit, or, when no permit has been issued, to the last known address of the operator, permittee, or person.

(3) All complaints and cease and desist orders shall be in writing and shall be signed by the commissioner.

(4) The commissioner may modify, vacate, or terminate any complaint or cease and desist order issued pursuant to this section.

(5) Any complaint or cease and desist order issued pursuant to this section, which requires cessation of active mining, expires within thirty (30) days of actual notice to the operator, permittee, or person, unless an informal public hearing is held at the site or within a reasonable proximity to the site where any viewings of the site can be conducted during the course of the informal public hearing; however, the complaint or cease and desist order shall not expire if the operator, permittee, or person waives the informal hearing.

(e) The commissioner shall send a copy of all complaints and cease and desist orders to the permittee's surety.

(f) Except as provided in subsection (c), a complaint or cease and desist order issued pursuant to this section shall inform the alleged violator or violators of the opportunity for an informal public hearing as provided in subdivision (d)(5), if applicable, and a hearing before the board as provided in § 59-8-120. If the complaint or cease and desist order is appealed within thirty (30) days of the date the complaint or cease and desist order is served, the operator, permittee, or person may request that the commissioner make a decision upon both the complaint or cease and desist order and a notice of proposed assessment arising from the complaint or cease and desist order as provided in § 59-8-117(b), if appropriate. Upon the request of the alleged violator or violators, the department shall promptly make available and provide access to any documents and other information that address the factual basis of the complaint.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the

governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-117. Civil penalty — Notice of proposed assessment — Hearing — Appeal —Recovery of assessment or violation — Violations — Correction of violation. [Contingent effective date, see Compiler's Notes.]

(a) Any operator, permittee, or person who violates this part, the board's rules, or any permit condition required by this part, or order issued pursuant to this part may be assessed a civil penalty by the commissioner, except that if the violation leads to the issuance of a cease and desist order, a civil penalty shall be assessed. A civil penalty assessed under this subsection (a) shall not exceed five thousand dollars ($5,000) for each violation. Each day of continuing violation may be deemed a separate violation for purposes of assessing a civil penalty. In determining the amount of the penalty, the commissioner shall consider the history of previous violations by the operator, permittee, or person at the particular coal surface mining operation; the seriousness of the violation, including any irreparable harm to the environment and any danger to the health or safety of the public; whether the operator, permittee, or person was negligent; and the demonstrated good faith of the operator, permittee, or person charged in attempting to achieve rapid compliance after notification of the violation. If notice of a proposed assessment is not provided as part of a complaint or cease and desist order pursuant to § 59-8-116, then the commissioner shall give notice of a proposed assessment by certified mail return receipt requested as provided in § 59-8-116(d)(2) within thirty (30) days of the date the complaint or order is served. If an appeal from the notice of proposed assessment is not made to the commissioner or the board as provided in subsection (b) or (c) by the operator, permittee, or person within thirty (30) days of service of the notification of the proposed assessment, the operator, permittee, or person is deemed to have consented to the assessment, and the assessment shall become final.

(b)(1) Unless the operator, permittee, or person subject to the notice of proposed assessment consents to the notice of proposed assessment under subsection (a), the commissioner shall not assess a civil penalty until the operator, permittee, or person receives an opportunity for a hearing before the commissioner.

(2) When a public hearing has been held, the commissioner shall make

findings of fact, and the commissioner shall issue a written decision as to the occurrence of the violation, if submitted by the operator, permittee, or person as provided in § 59-8-116(f), and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(3) Any hearing under this subsection (b) shall be of record and shall be subject to title 4, chapter 5, part 3.

(4) If an operator, permittee, or person who is charged with a violation fails to appear at the public hearing, then the operator, permittee, or person shall be deemed to have consented to the assessment, and the assessment shall become final.

(c) The operator, permittee, or person shall have thirty (30) days after the notice of proposed assessment is served pursuant to subsection (a) or, after a decision is issued by the commissioner pursuant to subdivision (b)(2) if an appeal is filed pursuant to subsection (b), to pay the proposed penalty in full or, if the operator, permittee, or person wishes to contest either the amount of the penalty or the violation, forward the proposed amount to the commissioner for placement in an escrow account. If, through administrative or judicial review of the proposed violation or penalty, the board, chancellor, or judge determines that no violation occurred or that the amount of the penalty should be reduced, the commissioner shall, within thirty (30) days of the determination, remit the applicable escrowed amount to the operator, permittee, or person with interest at the rate of six percent (6%) per annum, or at the prevailing department of treasury rate, whichever is greater. Failure to forward the money to the commissioner within thirty (30) days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) Notwithstanding § 20-4-101 to the contrary, the commissioner, through the attorney general and reporter, may institute proceedings in the name of the department for the recovery of any assessment or penalty made under this part in the chancery court for Davidson County, or the chancery court or circuit court in the district where the surface coal mining and reclamation operation is located. All sums recovered shall be placed in the state treasury and credited to the coal mining protection fund, created by § 59-8-132.

(e) Any person, who willfully and knowingly violates a condition of a permit issued under this part or fails or refuses to comply with any complaint or order issued under § 59-8-116, § 59-8-120, or § 59-8-121, except an order incorporated under subsections (a) and (b), or who willfully and knowingly falsifies or fails to make any statement, representation, or certification in any records, information, plans, specifications, or other data required by the board or the commissioner, commits a Class E felony and, upon conviction, shall be punished only by a fine of not more than ten thousand dollars ($10,000).

(f) Any person who knowingly violates the conflict of interest provisions of § 59-8-127 commits a Class E felony and, upon conviction, shall be punished only by a fine of not more than two thousand five hundred dollars ($2,500). For purposes of this subsection (f), "person" includes state officials and employees.

(g) Any person who knowingly engages in surface coal mining and reclamation operations without first obtaining a permit for the mine from the commissioner, commits a Class E felony, and upon conviction, shall be punished only by a fine of not more than ten thousand dollars ($10,000).

(h) Any person who, except as permitted by law, knowingly prevents or impedes an employee of this state from performing the employee's duty under this part commits a Class E felony, and upon conviction, shall be punished only by a fine of not more than ten thousand dollars ($10,000).

(i) Whenever a corporation commits the acts described in subsection (a), (e), (g), or (h), any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties and fines that may be imposed under subsections (a), (e), (g), and (h).

(j)(1) The time period for the correction of a violation for which a complaint has been issued under § 59-8-116 shall not end:

(A) In the case of any review proceeding under § 59-8-120 that is initiated by the operator, permittee, or person wherein the commissioner orders, after an expedited hearing, the suspension of the abatement requirements of the complaint after determining that the operator, permittee, or person will suffer irreparable loss or damage from the application of those requirements, until the entry of a final order by the board; or

(B) In the case of any review proceeding under § 59-8-121 that is initiated by the operator, permittee, or person wherein the court orders the suspension of the abatement requirements, until the entry of an order of the court.

(k) Any operator, permittee, or person who fails to correct a violation for which a complaint has been issued under § 59-8-116 within the period permitted for its correction shall be assessed a civil penalty of not less than seven hundred fifty dollars ($750) for each day during which the failure to correct or violation continues.

(l) All penalties recovered under this section shall be placed in the state treasury and credited to the coal mining protection fund, created in § 59-8-132. Nothing in this part abrogates the right of any person who is materially or personally damaged or injured by the operation of a surface mine to seek remedies against the responsible person in court.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-118. Civil action for relief — Action to enforce order. [Contingent effective date, see Compiler's Notes.]

(a)(1) Notwithstanding § 20-4-101(a) to the contrary, the commissioner may request the attorney general and reporter to institute a civil action for relief against any operator, permittee, or person or the operator's, permittee's, or person's agent, including a permanent or temporary injunction, restraining order, or any other appropriate order, and venue and jurisdiction for the action shall be in the Davidson County chancery or circuit court or the chancery or circuit court in the district where the surface mining operation is located, whenever the operator, permittee, person, or agent:

(A) Violates or fails or refuses to comply with any cease and desist order issued by the commissioner under this part;

(B) Interferes with, hinders, or delays the commissioner in carrying out the provisions of this part;

(C) Refuses to admit the commissioner to a surface coal mining and reclamation operation;

(D) Refuses to permit inspection of a coal mine by the commissioner;

(E) Refuses to furnish any information or report requested by the commissioner in furtherance of this part;

(F) Refuses to permit access to, and copying of, records that the commissioner determines to be necessary in carrying out this part; or

(G) Violates or threatens to violate this part, the board's rules, or a permit issued under this part, or violates or threatens to violate any cease and desist order or determination issued pursuant to this part.

(2) A court that is presiding over a civil action initiated under subdivision (a)(1) shall provide the relief that is appropriate.

(b)(1) The commissioner may bring an action to enforce a cease and desist order issued under this part if an appeal of the order is not requested in a timely manner and the order has not been complied with. In an action to enforce a cease and desist order, all findings of fact contained in the order and complaint are deemed to be final and not subject to review except as to receipt of notice of the order; provided, the defendant may proffer evidence of compliance with the cease and desist order.

(2) The commissioner may also bring an action to enforce any order made by the commissioner, which has become final either by the failure of any person to appeal the commissioner's order or by an appellate court's decision against any person who fails to comply with a final order. In these suits, the commissioner's decision shall not be subject to challenge as to matters of fact; provided, the defendant may present evidence showing compliance with the commissioner's order.

(c)(1) Notwithstanding § 20-4-101(a) to the contrary, any action for a permanent or temporary injunction, restraining order, or any other relief brought by the commissioner shall be filed in, and venue and jurisdiction for the action shall be in, the Davidson County chancery or circuit court, or the chancery or circuit court in the district where the surface mining operation is located, in which all or a part of the violation is or is about to occur, in the name of the department by the district attorney general or by the attorney general and reporter at the direction of the commissioner or the board, and

under the supervision of the attorney general and reporter.

(2) An enforcement proceeding shall not be tried by a jury.

(3) Appeals from judgments or decrees issued by trial courts in proceedings brought under this part shall be made to the supreme court despite the fact that controverted questions of fact may be involved.

(d) Nothing in this part eliminates any additional enforcement rights or procedures that are available under any state law to the commissioner, but are not specifically enumerated in this part.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-119. Civil action by aggrieved person — Intervention by commissioner. [Contingent effective date, see Compiler's Notes.]

(a) Except as provided in subsections (b) and (c), any aggrieved person may commence a civil action in the Davidson County chancery court or the chancery court in the district where the surface coal mining and reclamation operation is located to compel compliance with this part:

(1) Against the state or any state or local governmental agency, to the extent permitted by the eleventh amendment to the United States constitution, which is alleged to be in violation of this part, or any rule promulgated under this part, or order or permit issued pursuant to this part, or against any other person who is alleged to be in violation of this part, or any rule promulgated under this part, or order or permit issued pursuant to this part; or

(2) Against the commissioner to the extent permitted by the eleventh amendment to the United States constitution, when the commissioner is alleged to have failed to perform any role or duty under this part that is not discretionary for the commissioner.

(b) No action may be commenced under subdivision (a)(1):

(1) Until sixty (60) days after the plaintiff has provided written notice of the violation to the secretary, the commissioner, and any alleged violator; or

(2) If the commissioner, the board, or the state has commenced and is diligently prosecuting a civil action to require compliance with this part, or

any rule promulgated under this part, or order or permit issued pursuant to this part, but in any such action any person may intervene as a matter of right.

(c) No action may be commenced under subdivision (a)(2) until sixty (60) days after the plaintiff has provided written notice of the violation to the commissioner, in the manner that the board requires by rules promulgated under § 59-8-103(b)(1), except that an action may be brought immediately after notice of the violation is provided to the commissioner, if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(d) The commissioner may intervene in any civil action brought under this section as a matter of right.

(e) The court, in issuing any final order in any action brought under subsection (a), may award costs of litigation, including reasonable attorney fees and expert witness fees, to any party, whenever the court determines the award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Tennessee Rules of Civil Procedure.

(f) Nothing in this section restricts any right that any person, or class of persons, may have under any statute or common law to seek enforcement of this part and the rules issued pursuant to it, or to seek any other relief, including relief against the commissioner.

(g) Any person who incurs a personal injury or property damage due to an operator's violation of any regulation, order, or permit issued pursuant to this part may bring an action for damages against the operator, including reasonable attorney and expert witness fees, in the Davidson County chancery court or the chancery court of the county in which the surface coal mining and reclamation operation complained of is located. Nothing in this subsection (g) affects the rights established by, or limits imposed under, the Workers' Compensation Law, compiled in title 50, chapter 6.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-120. Hearings. [Contingent effective date, see Compiler's Notes.]

(a)(1) Any hearing brought before the board pursuant to §§ 59-8-112, 59-8-113, 59-8-114, 59-8-115, 59-8-116, 59-8-117, and 59-8-125 shall be conducted as a contested case.

(2) The hearing shall be heard before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless settled by the parties.

(3) The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the petition is filed.

(4) The scheduling order for the contested case issued by the administrative judge shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing.

(5) The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final, unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to § 4-5-315, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after the entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record, and shall allow each party an opportunity to present oral arguments.

(6) If appealed to the board or reviewed by the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness.

(7) In an appeal or review as provided in subdivisions (a)(5) and (6), the board shall render a final order, in accordance with § 4-5-314, affirming, modifying, remanding, or vacating the administrative judge's order.

(8) A final order rendered pursuant to this section is effective upon its entry, except as provided in § 4-5-320(b), unless a later effective date is stated in the final order.

(9) A petition to stay the effective date of a final order may be filed under § 4-5-316.

(10) A petition for reconsideration of a final order may be filed pursuant to § 4-5-317.

(11) Judicial review of a final order may be sought by filing a petition for review in accordance with § 4-5-322.

(12) An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; provided, in other matters before the board, it may be considered but shall not be binding on the board.

(b) Notwithstanding § 20-4-101(a) to the contrary, in the case of or refusal to comply with a notice of hearing, subpoena, or order issued under this section, venue and jurisdiction for the action shall be in the Davidson County chancery court or the chancery court in the district where the surface mining operation is located, upon application of the board or the commissioner, to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey the order of the court may be punished by the court as contempt.

(c) Notwithstanding subsection (a), any operator, permittee, or person to whom an order of suspension of a permit or order to cease and desist surface coal mining and reclamation operations is directed pursuant to this part, shall comply with the order immediately, but, on appeal to the board, shall, within thirty (30) days, have a hearing and decision on the order, unless temporary relief has been granted by the commissioner or by a court.

(d) Any aggrieved person may, after filing an appeal to the board, file with the board a written request that the commissioner grant temporary relief from any complaint or order, together with a detailed statement giving reasons for requesting the relief. The board shall issue an order or decision granting or denying the relief within five (5) days of its receipt, unless the parties agree to a longer time. The board may grant the relief requested, under the conditions the board prescribes, if:

(1) All parties to the proceeding have been notified and a hearing has been held in the locality of the surface coal mining and reclamation operations on the request for temporary relief in which all parties were given an opportunity to be heard;

(2) The operator, permittee, or person shows that there is a substantial likelihood that the final decision of the board in the hearing will be favorable to the operator, permittee, or person; and

(3) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(e) Whenever an order or decision is issued, either by the board or as a result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of the expenses for the hearing and administrative judge as determined by the board to have been reasonably incurred by the person for, or in connection with, the person's participation in the proceedings, including any judicial reviews of agency action, may be assessed against either party as the court, resulting from judicial review, or the board, deems proper.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-121. Judicial review — Temporary relief. [Contingent effective date, see Compiler's Notes.]

(a)(1) Notwithstanding § 20-4-101(a) to the contrary, any final order or determination by the board is subject to judicial review, and venue and jurisdiction for such action shall be in the Davidson County chancery court or the chancery court in the district where the surface mining operation is located.

(2) Judicial review shall be pursuant to § 4-5-322; however, no judicial review shall be had of any order that becomes final as a result of failure of the aggrieved party to appear at a hearing:

(A) That was requested by the aggrieved party; and

(B) For which the aggrieved party received adequate notice.

(b) In the case of a proceeding to review any order or decision issued by the board under this part, including an order or decision pertaining to any order for cessation of surface coal mining and reclamation operations, the court may, under such conditions as it may prescribe, grant any temporary relief that it deems appropriate pending a final determination of the proceedings if:

(1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting relief shows that there is a substantial likelihood that that person will prevail on the merits of the final determination of the proceeding; and

(3) The relief requested will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.
Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-122. Enforcement or protection of interest in water resources affected by mining operation — Repair or compensation for subsidence damage — Replacement of water supply. [Contingent effective date, see Compiler's Notes.]

(a) Nothing in this part affects the right of any person to enforce or protect, under applicable law, that person's interest in water resources affected by a mining operation.

(b) The permittee or operator of a surface coal mine shall replace the water supply of an owner of an interest in real property who obtains all or part of that owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source when the water supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation.

(c)(1) Underground coal mining operations conducted in this state after October 24, 1992, shall:

(A) Promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and structures related thereto, or noncommercial building due to underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and structures related thereto, or noncommercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and structures related thereto, or noncommercial building and shall be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy; and

(B) Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

(2) Nothing in this subsection (c) shall interrupt underground coal mining operations.

History.
Acts 2018, ch. 839, § 1.

Compiler's Notes.
Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclama-

tion operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-123. Departure from environmental protection performance standards on experimental basis. [Contingent effective date, see Compiler's Notes.]

(a) In order to encourage advances in coal surface mining and reclamation practices, or to allow post-mining land use for industrial, commercial, residential, or public use, including recreational facilities, the commissioner, with the approval of the secretary, may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under this part.

(b) The departures may be authorized if:

(1) The experimental practices are potentially more environmentally protective, or at least as protective, during and after mining operations, as those required by promulgated standards;

(2) The mining operations approved for a particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices;

(3) The experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards; and

(4) All other state and federal agencies with jurisdiction over the environmental standards or practices for which departure is desired concur with the departure.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-124. Declaration of hazard — Authority of commissioner to fill or reclaim. [Contingent effective date, see Compiler's Notes.]

(a) The general assembly declares that voids, and open and abandoned

tunnels, shafts, auger holes, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety, and that surface impacts of any underground or surface coal mining and reclamation operation may degrade the environment. The commissioner is authorized to fill voids, seal abandoned tunnels, shafts, auger holes, and entryways, and reclaim surface impacts of underground or surface coal mines that the commissioner determines could endanger life and property, constitute a hazard to public health and safety, or degrade the environment. The commissioner is authorized to carry out this subsection (a) as part of this state's approved abandoned mine reclamation program, as provided for in § 59-8-301.

(b) Funds available for use in carrying out the purpose of this section may include those funds which are allocated to this state under 30 U.S.C. § 1232(g).

(c) In those instances where mine piles are being reworked for environment and conservation purposes, the incremental costs of disposing of the wastes from the operations by using them to fill voids and seal tunnels may be eligible for funding pursuant to this section; provided, that the disposal of these wastes meets the purposes of this section.

(d) The commissioner may acquire by purchase, donation, or otherwise the interest in land that the commissioner determines necessary to carry out this section.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-125. Designation of land area as unsuitable for surface coal mining and reclamation operations. [Contingent effective date, see Compiler's Notes.]

(a)(1) The commissioner shall establish a planning process enabling objective decisions to be made based upon competent and scientifically sound data and information as to which, if any, land areas of this state are unsuitable for all or certain types of surface coal mining and reclamation operations pursuant to the standards set forth in this part, but that designation shall not prevent the mineral exploration of any designated area.

(2) Upon receipt of a petition pursuant to subsection (b), the commissioner

shall designate an area as unsuitable for all or certain types of surface coal mining and reclamation operations if the commissioner determines that reclamation pursuant to the requirements of this part is not technologically and economically feasible.

(3) Upon petition pursuant to subsection (b), an area may be designated unsuitable for certain types of surface coal mining and reclamation operations if such operations:

(A) Are incompatible with existing state or local land use plans or programs;

(B) Affect fragile or historic lands in a way that could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems;

(C) Affect renewable resource lands, including, but not limited to, aquifers and aquifer recharge areas, in a way that could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(D) Affect natural hazard lands, including, but not limited to, areas subject to frequent flooding and areas of unstable geology, in a way that could substantially endanger life and property.

(4) The program shall include a process that includes:

(A) A database and inventory system that will permit proper evaluation of the capacity of different land areas of this state to support and permit reclamation of surface coal mining and reclamation operations;

(B) A method or methods for implementing land use planning decisions concerning surface coal mining and reclamation operations; and

(C) Proper notice and opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(5) Determinations of the unsuitability of land for surface coal mining and reclamation operations shall be integrated as closely as possible with present and future land-use planning and regulation processes at the federal, state, and local levels.

(6) This section does not apply to lands on which surface coal mining operations are being conducted on August 3, 1977, or under a permit issued pursuant to this part, or where substantial legal and financial commitments in the operation were in existence prior to January 4, 1977.

(b) Any aggrieved person may petition the commissioner to have an area designated as unsuitable for surface coal mining and reclamation operations, or to have an existing designation terminated. A petition filed pursuant to this subsection (b) shall contain allegations of facts with supporting evidence that tends to establish the allegations. Within ten (10) months after receipt of the petition, the commissioner shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a petition has been filed, but before the hearing on it, any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations. Within sixty (60) days after the hearing, the commissioner shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition,

and the reasons for the decision. In the event that all of the petitioners stipulate agreement prior to the requested hearing, and withdraw their requests, the hearing need not be held.

(c) Prior to designating any land areas as unsuitable for surface coal mining and reclamation operations, the commissioner shall prepare a detailed statement on:

(1) The potential coal resources of the area;

(2) The demand for coal resources; and

(3) The impact of the designation on the environment, the economy, and the supply of coal.

(d) In reaching a decision on whether to designate any land areas as unsuitable for surface coal mining and reclamation operations, the commissioner shall use:

(1) The information contained in the database, records, and inventory system;

(2) Any information that was provided by other governmental agencies or the public; and

(3) The information contained in the detailed statement provided in subsection (c).

(e) The commissioner shall issue a final written decision, including a statement of findings, within sixty (60) days of the completion of the public hearing, or if no public hearing is held, within twelve (12) months of receipt of the complete petition. The commissioner shall simultaneously notify the petitioner, other parties to the hearing, and the regional director of the office of surface mining, of the decision by certified mail.

(f) The commissioner's decision is subject to appeal to the board as provided in § 59-8-120, and to judicial review as provided in § 59-8-121.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-126. Promulgation of rules requiring training, examination, and certification of persons engaging in, or directly responsible for, blasting or use of explosives. [Contingent effective date, see Compiler's Notes.]

The board shall promulgate rules under § 59-8-103(b)(1) to require the training, examination, and certification of persons engaging in, or directly responsible for, blasting or use of explosives in coal surface mining operations.

History.
Acts 2018, ch. 839, § 1.

Compiler's Notes.
Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.
Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-127. Department employee prohibited from having financial interest in underground coal mining operation or surface coal mining and reclamation operation. [Contingent effective date, see Compiler's Notes.]

No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any underground coal mining operation or surface coal mining and reclamation operation.

History.
Acts 2018, ch. 839, § 1.

Compiler's Notes.
Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.
Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-128. Part ancillary and supplemental to other state laws. [Contingent effective date, see Compiler's Notes.]

This part does not operate to repeal or affect any of the laws of this state relating to the pollution of the air or waters, or any environment and conservation or mining laws, but shall be held and construed as ancillary and supplemental thereto.

History.
Acts 2018, ch. 839, § 1.

Compiler's Notes.
Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.
Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-129. Conformance with statutes and rules. [Contingent effective date, see Compiler's Notes.]

(a) Irrespective of the date of issuance of a permit, all operators, permittees, and persons, except as provided in subsection (b), shall immediately conform to any statutes enacted, or rules adopted pursuant to those statutes, on the effective date of such statutes and rules. This section does not require the regrading or replanting of any area on which the work was satisfactorily performed prior to the effective date of the statute or rule.

(b) The board shall promulgate rules under § 59-8-103(b)(1) that are consistent with 30 CFR 773.4 concerning continued operations under federal program permits.

History.
Acts 2018, ch. 839, § 1.

Compiler's Notes.
Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take

effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.
Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-130. Compliance by agency, unit, or instrumentality of state, federal, or local government. [Contingent effective date, see Compiler's Notes.]

Any agency, unit, or instrumentality of state, federal, or local government, including any publicly owned utility or publicly owned corporation of state, federal, or local government, that proposes to engage in exploration or mining operations that are subject to this part, shall comply with this part; provided, that local governmental entities and state agencies are not subject to fees or bonds except as otherwise required by this part.

History.
Acts 2018, ch. 839, § 1.

Compiler's Notes.
Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.
Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-131. Hearing involving major energy project. [Contingent effective date, see Compiler's Notes.]

Any hearing required by this part shall be conducted in accordance with § 13-18-114, when the hearing involves a major energy project, as defined by § 13-18-102.

History.
Acts 2018, ch. 839, § 1.

Compiler's Notes.
Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the

regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-132. Coal mining protection fund.

(a) There is created a segregated account within the state treasury to be known as the "coal mining protection fund." Monies shall be deposited to the fund pursuant to §§ 59-8-107, 59-8-117, and 67-7-110, and shall be invested for the benefit of the fund pursuant to § 9-4-603.

(b) The moneys in the coal mining protection fund shall be used for the administration and enforcement of the requirements of this part.

(c) All fees and penalties collected by the commissioner pursuant to this part shall be deposited by the state treasurer into the coal mining protection fund, created in subsection (a), and shall be used by the commissioner to defray expenses necessary to administer this part. Unexpended and unobligated fees remaining in this account at the end of any fiscal year shall not revert to the general fund but shall remain available for the purposes set forth in this part.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Effective Dates.

Acts 2018, ch. 839, § 47. April 25, 2018.

59-8-133. Implementation of part — Cost of administering and enforcing part. [Contingent effective date, see Compiler's Notes.]

(a) Implementation of this part is subject to the availability of federal funds for such purpose.

(b) The cost of administering and enforcement of this part shall be paid in equal proportions by federal funds made available for such purpose and funds in the coal mining protection fund, created in § 59-8-132.

History.

Acts 2018, ch. 839, § 1.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-

8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-134. Report required for revenues generated from fees. [Contingent effective date, see Compiler's Notes.]

On or before the January 1 occurring two (2) years after the effective date of this part [See the Compiler's Notes], and on or before January 1 every two (2) years thereafter, the department of environment and conservation shall submit a report to the finance, ways and means committees of the house of representatives and the senate on the revenue generated from the fees imposed by this part. The department shall include in the report a determination as to whether an adjustment to the fees is necessary to provide that the administration and enforcement of this part is fiscally self-sufficient and that the revenues from the fees are sufficient to meet required expenditures.

History.

Acts 2018, ch. 839, § 43.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which enacted this part, §§ 59-8-101—59-8-134, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

PART 2

TENNESSEE MINERAL SURFACE MINING LAW OF 1972

59-8-201. Short title.

This part shall be known and may be cited as the "Tennessee Mineral Surface Mining Law of 1972."

History.

Acts 1972, ch. 547, § 1; T.C.A. (orig. ed.), § 58-1540; Acts 1980, ch. 908, § 37.

Compiler's Notes.

For transfer of the division of surface mining and reclamation and its functions under parts 2 and 3 of this chapter and ch. 10 of this title, from the department of conservation (now environment and conservation) to the department of health and environment (now health), see Executive Order No. 40 (February 11, 1983).

For transfer of the bureau of environment in the department of health and its related func-

tions and the administration of the Tennessee environmental statutes (excluding title 68, chs. 14, 110 and 112) from the department of health to the department of environment and conservation, see Executive Order No. 42 (February 4, 1991).

Acts 1992, ch. 693, § 1 provided that references in this part to the commissioner or the department of health, health and environment, or public health, are amended to become references to the commissioner or department of environment and conservation.

Cross-References.

Coal surface mining, title 59, ch. 8, parts 3 and 4.

Major energy projects, coordination of regulation, title 13, ch. 18.

Printed contract forms for products extracted from or beneath the earth, § 47-50-110.

Severance tax on coal, title 67, ch. 7, part 1.

Textbooks.

Tennessee Jurisprudence, 4 Tenn. Juris., Bankruptcy, § 41; 18 Tenn. Juris., §§ 3, 5.

Attorney General Opinions.

Application to removal of clay for landfill construction, OAG 97-048, 1997 Tenn. AG LEXIS 47 (4/14/97).

Constitutionality of population exemption under Tennessee mineral surface mining law, OAG 97-046, 1997 Tenn. AG LEXIS 45 (4/14/97).

NOTES TO DECISIONS

1. Bankruptcy.

A judgment representing a civil penalty for violations of the Tennessee Surface Mining Law is excepted by 11 U.S.C. § 523(a)(7) from a debtor's discharge in bankruptcy. In re Daugherty, 25 B.R. 158, 1982 Bankr. LEXIS 5420 (Bankr. E.D. Tenn. 1982).

59-8-202. Definitions. [See contingent amendment to subdivision (3) and Compiler's Notes.]

Except as otherwise required by the context, the following terms when used in this part or in regulations issued thereunder shall be construed to mean:

(1) "Area affected" means the area of land from which overburden is to be or has been removed and upon which a spoil bank is to be or has been deposited. It also includes areas of land on which haul roads or other access roads (other than public roads) are to be or have been located. Insofar as clay is concerned, affected land shall not be construed to include land upon which overburden is deposited if, in the opinion of the commissioner, the deposition of such overburden amounts to reclamation of a previously mined area;

(2) "Bench" means the ledge, shelf or terrace formed in the contour method of surface mining;

(A) "Fill bench" means that portion of the bench which is formed by depositing overburden beyond the cut section; and

(B) "Solid bench" means the portion of the bench between the highwall and the fill bench and thereby within the region once occupied by the mineral or overburden;

(3) **[Current version. See second version for contingent amendment and Compiler's Notes.]** "Board" means the Tennessee board of water quality, oil, and gas, established by § 69-3-104;

(3) **[Contingent amendment. See the Compiler's Notes.]** "Board" means the Tennessee board of energy and natural resources, established by § 69-3-104;

(4) "Commissioner" means the commissioner of environment and conservation or the commissioner's designees;

(5) "Director" means the director of the division of water pollution control;

(6) "Highwall" means a slope in excess of thirty-five degrees (35°) which is

created by mining operations;

(7)(A) "Mineral" means, in any county having a population of more than six hundred thousand (600,000), according to the 1970 federal census or any subsequent federal census, clay, stone, gravel, sand, phosphate rock, metallic ore and any other solid material or substance of commercial value found in natural deposits on or in the earth, but does not include limestone, coal, marble, chert or dimension stone;

(B) "Mineral" means, in any county having a population of six hundred thousand (600,000) or less, according to the 1970 federal census or any subsequent federal census, clay, stone, phosphate rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth, but does not include limestone, coal, marble, chert, gravel, sand or dimension stone;

(C) "Mineral" means, on any land on which the state, or any department, agency, or other unit of state government, owns the surface interest, clay, stone, gravel, sand, phosphate rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth, but does not include coal;

(8) "Operation" means all of the premises, facilities, and equipment and the use thereof in the process of removing and exploring for minerals from a designated surface mine area;

(9) "Operator" means any person, partnership or corporation engaged in surface mining who removes or intends to remove more than two hundred fifty (250) tons of any mineral from the earth by surface mining within twelve (12) successive calendar months; or who removes overburden for the purpose of determining the location, quality or quantity of any natural mineral deposit. Any operator who has obtained a permit, and otherwise complied with this part may subcontract any part, or all, of the mining of the lands covered by the permit to subcontractors and such subcontractors are not considered an "operator" within the meaning of this part;

(10) "Orphan mine" means land affected by surface mining operations prior to enactment of the Tennessee Strip Mine Law of 1967 (repealed);

(11) "Overburden" means all earth and other materials which are removed to gain access to the mineral in the process of surface mining;

(12) "Person" means an individual, partnership, corporation or any other association of individuals;

(13) "Provisions of this part" means the rules, regulations and orders issued by the commissioner pursuant to this part as well as the words of the sections themselves;

(14) "Reclamation" means the process of backfilling, grading and shaping of the disturbed land in the affected area, constructing water control facilities, the taking of measures to control current or future air, water or soil pollution, and the planting of vegetation, and other measures; all directed toward placing the affected area in a condition whereby it can serve some purpose, at least as useful as that in existence before any mining;

(15) "Shaping" means grading, backfilling and other earth moving required by this part to be done by the operator in connection with the reclamation of the area affected;

(16) "Spoil bank" means the overburden as it is piled or deposited in the process of surface mining;

(17) "Stream" means any waterway that normally exhibits water flow at least six (6) consecutive months per year; and

(18) "Surface mining" means all or any part of the process followed in the production of minerals from a natural mineral deposit by the open pit or open cut method, auger method, highwall mining method which requires a new cut or removal of overburden, or any other mining process in which the strata or overburden is removed or displaced in order to recover the mineral; or in which the surface soil is disturbed or removed for the purpose of determining the location, quality or quantity of a natural mineral deposit.

History.

Acts 1972, ch. 547, § 2; 1974, ch. 590, § 2; 1975, ch. 188, § 1; 1975, ch. 310, § 1; 1976, ch. 752, § 1; 1978, ch. 679, § 3; T.C.A., § 58-1541; Acts 1980, ch. 695, § 1; 1980, ch. 908, § 38; 1981, ch. 406, §§ 1, 2; 1988, ch. 1004, § 1; 1992, ch. 693, § 1; 2009, ch. 211, § 1; 2011, ch. 341, §§ 1, 2; 2018, ch. 839, § 5.

Compiler's Notes.

The Tennessee Strip Mine Law of 1967 was repealed by § 26 of Acts 1972, ch. 547.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

For the Preamble to the act concerning reclamation after extraction of minerals on state-owned land, please refer to Acts 2009, ch. 211.

Acts 2012, ch. 986, §§ 26-28 amended § 69-3-104, referred to in this section, to substitute "Tennessee board of water quality, oil, and gas" for "board of water quality control".

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking, upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment substituted "board of energy and natural resources" for "board of water quality, oil, and gas" in the definition of "board". See the Compiler's Notes.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

Cross-References.

Conveyance of certain mineral rights and mineral interests, § 66-5-111.

Rock harvesting operations, §§ 69-3-143 — 69-3-147.

Textbooks.

Tennessee Jurisprudence, 18 Tenn. Juris., Mines and Minerals, § 3.

NOTES TO DECISIONS

Analysis

1. Operator.
2. Mineral.

1. Operator.

Where defendant hired a third party to engage in surface mining on his property, intended to remove coal from his property and admitted that at least 300 tons were removed and stored at his tipple, he qualified as an operator under this section. Bunch v. Allison, 596 S.W.2d 814, 1980 Tenn. LEXIS 436 (Tenn. 1980).

2. Mineral.

In a nuisance action brought by the state against a company concerning its use of mineral rights to extract sandstone from property in which the state held the surface rights, trial court erred by granting the company's motion for summary judgment and holding that the term "minerals" as used in the deed unambiguously included sandstone for purposes of T.C.A. § 59-8-202(7)(B); court of appeals held that the deed could not be read as waiving the surface owner's right to use the property for its reasonable or intended purpose, and the company

failed to demonstrate the absence of a disputed issue of material fact on the question of whether its mining techniques were impermissibly destructive. State v. Lahiere-Hill, LLC, 278 S.W.3d 745, 2008 Tenn. App. LEXIS 444 (Tenn. Ct. App. July 31, 2008).

59-8-203. Purpose of act.

The general assembly finds that the unregulated surface mining of minerals can cause soil erosion and landslides, stream pollution, and accumulation and seepage of contaminated water; contributes to floods; impairs the value of land for agricultural or other purposes; affects fish and wildlife and their habitats; counteracts efforts for the conservation of soil, water and other natural resources; impairs the owners' rights in neighboring property; creates fire hazards; and in general creates conditions inimical to life, property and the public welfare so as to require the exercise of the state's police power in the regulation of surface mining. The general assembly further finds that there are wide variations in the circumstances and conditions surrounding and arising out of the surface mining of minerals due primarily to differences in topographical, geological, and soil conditions, by reason of which it is necessary, in order to provide the most effective, beneficial and equitable solution to the problem, that broad discretion be placed in the authority designated to administer and enforce the regulatory provisions enacted by the general assembly. It is the purpose of this part, therefore, to provide for such regulation and control of surface mining so as to minimize its injurious effects.

History.
Acts 1972, ch. 547, § 3; T.C.A., § 58-1542.

Textbooks.
Tennessee Jurisprudence, 18 Tenn. Juris., Mines and Minerals, § 14.

NOTES TO DECISIONS

1. In General.
The statutory scheme is clearly designed for the protection of the environment and the general public and its health. McDaniel v. McCall, 655 S.W.2d 155, 1983 Tenn. App. LEXIS 588 (Tenn. Ct. App. 1983).

59-8-204. Powers of the commissioner.

The commissioner shall exercise the following authority and powers to:

(1) Administer and enforce the provisions of this part and all rules and regulations and orders promulgated thereunder;

(2) Conduct or obtain investigations, research, experiments, training programs and demonstrations, and to collect and disseminate information relating to surface mining, reclamation of surface mined lands, and control of pollution of water and soil affected by surface mining;

(3) Adopt, after giving public notice and affording an opportunity to all interested persons to appear and offer evidence at a public hearing in connection therewith, general rules and regulations pertaining to surface mining to accomplish the purposes of this part. Such rules and regulations, which shall have the force and effect of law, shall be of uniform application as far as practicable, but they may take proper account of differences in topography, geology, and soil conditions, and established use patterns of

neighboring lands as recognized by the local planning agency;

(4) Adopt, without notice or hearing, rules and regulations with respect to procedural aspects of hearings, the filing of reports and orders, the issuance of permits, and other procedural matters;

(5) Issue orders requiring the adoption by an operator of remedial measures necessary for carrying out the provisions of this part or rules and regulations issued thereunder;

(6) Examine and approve or disapprove applications for permits, bonds, mining and reclamation plans, revegetation plans, and after-use plans submitted by operators;

(7) Establish standards for acceptable mining and reclamation of affected areas which shall be designed to achieve soil stabilization, control soil erosion, and obliterate the scars of the stripping operation and ensure that the operation meets applicable soil and water quality standards;

(8) Make such investigations or inspections as the commissioner may deem necessary to ensure compliance with any provisions of this part, including the right to enter at any time upon an area affected for such purposes and the right to ingress and egress across intervening properties;

(9) Order the suspension and/or revocation after warning of any permit for failure to comply with any of the provisions of this part or with any rules, regulations or orders adopted pursuant thereto;

(10) Order the immediate cessation of any operation that is started or continued without a permit as required by the provisions of this part;

(11) Issue, after notice and an opportunity for a hearing, special rules and regulations in connection with granting a permit to an operator where the sole purpose of the operation covered by such permit is to remove overburden for the purpose of determining the location, quality or quantity of a natural mineral deposit. Such rules and regulations shall be, insofar as practical, in compliance with the requirements of this part that pertain to the granting of a mining permit so that a map, mining plan, reclamation and vegetation plan and bond are required. The commissioner shall deny such permits for areas which cannot be granted a general permit under the provisions of this part;

(12) Institute and prosecute all such court actions as may be necessary to obtain the enforcement of any order issued by the commissioner in carrying out the provisions of this part; and

(13) Issue regulations concerning blasting which are designed to protect the water resource, prevent off-site damage to citizens and property, and prevent spoil from being thrown off of the permitted area where no spoil placement is permitted by the approved reclamation plan.

History. Acts 1972, ch. 547, § 4; 1974, ch. 590, § 9; 1977, ch. 34, § 1; T.C.A., § 58-1543; Acts 1980, ch. 908, § 39.

59-8-205. Permits, requirements and criteria — Amendment — Appeal upon failure to grant — Renewal.

(a) No operator shall engage in surface mining without having first obtained from the commissioner a permit therefor. This permit shall authorize the

operator to engage in surface mining upon the area of land described in the operator's application for a period not to exceed five (5) years from the date of its issuance. Such permit shall be granted by the commissioner only if the requirements and criteria set forth in subdivisions (a)(3)-(9) and any rules and regulations pertaining to those requirements are satisfied, and only upon the submission by the operator and approval by the commissioner of a bond as provided in § 59-8-207 and a mining and reclamation plan as provided in § 59-8-208.

(1) The granting of such permit shall also be subject to payment by the operator of the fee prescribed in § 59-8-206 and upon submission of the following information:

(A) The name and permanent address of the operator as well as any temporary address to be used by the operator in connection with the operation covered by the permit. If the operator is other than an individual or corporation, the names and permanent addresses of all persons having an interest in the operation shall be listed. If the operation is a corporation, the names and permanent addresses of all persons owning ten percent (10%) or more of the stock shall be listed;

(B) A map showing the general location of the affected area with relation to property lines, nearby towns, county lines, public roads, and streams;

(C) Identification of any surface mining permit or permits which the operator (or any person having an interest in the operation) holds or has previously held in Tennessee, together with a statement of whether or not any surface mine permit previously held by applicant operator or any person, partnership, or corporation now associated with, or in the past associated with, the applicant operator was suspended, revoked or terminated for failure to comply with the reclamation or revegetation requirements of such surface mining permit or permits, and a statement of whether or not any surface mine permit in any other state previously held by the applicant operator or any person, partnership, or corporation now associated with, or in the past associated with, the applicant operator was suspended, revoked or terminated for failure to comply with the reclamation and revegetation requirements of such permit and the penalty imposed, if any, in addition to such suspension, revocation or termination;

(D) Identification of the owner or owners or designated representative of the surface of the area affected by the permit, and the identification of the owner or owners of all surface area within five hundred feet (500′) of any part of the area;

(E) Identification of the owner or owners of the minerals to be mined;

(F) Identification of the source of the operator's legal right to enter and mine the minerals on the land affected by the permit; and

(G) A copy of the operator's discharge permit from the division of water quality control, or a letter from the division of water management stating that no discharge will take place and, therefore, no permit is required.

(2) The commissioner may provide for amendment of the permit of any operator who is otherwise complying with the provisions of this part upon payment of the specified supplemental fee. If the application for an amend-

ment of the permit provides for an increase or reduction in the acreage covered by it, the operator shall specify in writing any pertinent changes in the information furnished in the original application for a permit, and shall amend the bond and the mining and reclamation plan previously submitted, as necessary or appropriate to carry out the provisions of this part. The commissioner's approval of a proposed amendment of the permit shall be subject to the commissioner's approval of the revised (or a new) bond and mining and reclamation plan, and further, subject to the commissioner's determination that the amendment satisfies the requirements and criteria set forth in subdivisions (a)(3)-(9), as well as any rules and regulations pertaining to those requirements.

(3) An on-the-ground inspection of the proposed affected area will be made by the commissioner or the commissioner's representative before a permit is issued.

(4) No application for a permit shall be approved by the commissioner if there is found, on the basis of the information set forth in the application or by on-the-ground inspection, that the requirements of this part, or regulations stemming therefrom, will not or cannot be observed, or that there is probable cause to believe that the proposed method of operation, road system construction, shaping or revegetation of the affected area cannot be carried out in a manner consistent with the purpose of this part and applicable air, noise, and water quality standards of this state.

(5) If the commissioner finds that the overburden on any part of the area of land described in the application would be such that landslides, deposition of sediment in stream beds or water pollution cannot be strictly controlled, the commissioner shall delete such part of the land from the area for which the permit is granted.

(6) No permit for mining shall be granted if:

(A) The applicant has had a Tennessee surface mine permit revoked or suspended and the bond forfeited;

(B) The applicant is or was a partner in a partnership or was an officer, director or owner of ten percent (10%) or more of the stock of a corporation which has had a Tennessee surface mine permit revoked or suspended and the bond forfeited; or

(C) In the event that the applicant is a corporation or partnership, any partner in the partnership, or any officer, director or owner of ten percent (10%) or more of the stock of the corporation has had a Tennessee surface mine permit revoked or suspended and bond forfeited;

unless the area covered by the previously suspended or revoked permit has been completely reclaimed by the responsible operator in compliance with the provisions of this part at no cost to the state.

(7) If the commissioner finds that any part of the operation would constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, reservoir, water wells, officially designated scenic areas or other private or public property, the commissioner shall delete such part of the land from the area for which the permit is granted.

(8) The applicant for a surface mining permit shall give public notice at least one (1) day prior to the filing of an application in a newspaper of general

circulation covering the county where the proposed surface mine is to be located of the applicant's intent to operate a surface mine, and its proposed location. The information to be included in the public notice shall conform to regulations issued by the commissioner. In addition, the commissioner will receive any written statements from any interested person or groups of persons, and such statements shall be taken into consideration when the commissioner makes a determination of the application. The commissioner shall then, in not less than forty-five (45) nor more than sixty (60) days from the filing of the application for a permit, either approve application or notify the operator in writing, stating in detail the reason for not approving the application. If the application is approved, the permit will be granted upon the posting of the required bond. The action on the part of the commissioner in failing to grant any permit may be appealed to the board and the courts as provided in the Tennessee Coal Surface Mining Law of 1980, compiled in part 3 of this chapter.

(9) Any holder of a valid surface mining permit issued pursuant to this part who wishes to continue the operation beyond the original permit expiration date shall make application for renewal within sixty (60) days prior to the expiration date of such permit, and upon meeting the requirements set forth in subdivisions (a)(1)-(9), and any rules and regulations pertaining to those requirements, the renewal shall be granted.

(b) Permits and the associated applications, hearings, and other actions required by this section and part shall be conducted in accordance with title 13, chapter 18 when the permit or action involves a major energy project, as defined in § 13-18-102.

History.

Acts 1972, ch. 547, § 5; 1974, ch. 590, §§ 3, 4; 1976, ch. 605, § 1; 1977, ch. 164, §§ 2, 4; T.C.A., § 58-1544; Acts 1980, ch. 695, § 2; 1980, ch. 908, § 40; 1981, ch. 131, § 37; 1990, ch. 890, §§ 1, 2.

Textbooks.

Tennessee Jurisprudence, 18 Tenn. Juris., Mines and Minerals, § 14.

Law Reviews.

Legislative Clarification of the Correlative Rights of Surface and Mineral Owners (J. Stephen Dycus), 33 Vand. L. Rev. 871.

NOTES TO DECISIONS

1. Public Policy.

Plaintiff excavator, who in violation of the Tennessee Surface Mining Law, compiled in title 59, ch. 8, part 2, performed excavation work on lands represented by mining operator as his leasehold until he was served with an order to cease and desist, and subsequently sought to recover from true lessee who allegedly agreed to pay for plaintiff's mining activities, would not be permitted to recover on public policy grounds. McDaniel v. McCall, 655 S.W.2d 155, 1983 Tenn. App. LEXIS 588 (Tenn. Ct. App. 1983).

DECISIONS UNDER PRIOR LAW

Analysis

1. In General.
2. Constitutionality.

1. In General.

T.C.A. § 66-5-102 and former T.C.A. § 59-8-205(1)(F)(ii) concerning surface mining of coal do not encroach upon the domain of the judiciary but rather codify the age-old, common-law rule that the intent of the parties governs in the construction of contracts, deeds, wills and the like; the statutes create no irrebuttable presumptions and exclude no evidence from consideration and thus do not affect the courts' customary function of ascertaining the parties' intent based upon all the evidence. Doochin v. Rackley, 610 S.W.2d 715, 1981 Tenn. LEXIS 397 (Tenn. 1981).

2. Constitutionality.

Strip mining regulation contained in former T.C.A. § 59-8-205(1)(F)(ii) and in T.C.A. § 66-5-102 does not deny equal protection, as the legislative classification is reasonably related to legitimate public interests. Doochin v. Rackley, 610 S.W.2d 715, 1981 Tenn. LEXIS 397 (Tenn. 1981).

Since neither the plaintiff miners nor their predecessor in title was ever conveyed the legal right to strip mine, T.C.A. § 66-5-102 and former T.C.A. § 59-8-205(1)(F)(ii) concerning surface mining of coal did not unconstitutionally affect plaintiffs' contract rights or deprive them of property without due process, for the statutes merely codified the common law governing the construction of deeds and other such contracts. Doochin v. Rackley, 610 S.W.2d 715, 1981 Tenn. LEXIS 397 (Tenn. 1981).

59-8-206. Fees.

The permit shall consist of a basic fee of two hundred fifty dollars ($250) for each year of the permit, plus an additional acreage fee of twenty-five dollars ($25.00) for each acre or fraction thereof of the land affected by the operation, not to exceed two thousand five hundred dollars ($2,500) for such acreage fee, but in subsequent years no acreage fee will be charged for any acre on which the acreage fee has already been paid in the preceding years. No permit fee shall be charged for land upon which overburden is deposited if, in the opinion of the commissioner, the deposition of such overburden amounts to reclamation of a previously mined area. The supplemental basic fee for an amendment of a permit shall be fifty dollars ($50.00), and to the extent the amendment entails an increase or decrease in the acreage covered by the permit, the total acreage fee paid for the year shall be correspondingly increased or decreased by the amount per acre or fraction thereof specified hereinabove.

History.

Acts 1972, ch. 547, § 6; 1974, ch. 590, § 11; T.C.A., § 58-1545; Acts 1980, ch. 908, § 41; 1990, ch. 890, § 3.

59-8-207. Performance bonds.

(a) The bond filed with the commissioner shall be payable to the state of Tennessee and shall be executed by the operator and a corporate surety that is approved by the commissioner and properly authorized to act as corporate surety and licensed to do business in this state; provided, however, that the operator may elect to deposit cash, irrevocable letters of credit or certificates of deposit with the state treasurer in lieu of a corporate surety if the instruments are executed in accordance with guidelines set forth by the commissioner. The state treasurer shall receive and hold the deposits in the name of the state of Tennessee, in trust, for the purposes for which the deposit is made and shall at all times be responsible for the custody and safekeeping of the deposits. The operator making the deposit shall be entitled from time to time to demand and receive from the treasurer, on the written order of the commissioner, the whole

or any portion of any instruments so deposited upon depositing with the treasurer, in lieu of the deposits, other instruments of the classes specified in this section having a value at least equal to the sum of the bond or instrument and also to demand and recover any interest income from instruments as the interest becomes due and payable.

(b) The bond or cash deposit or marketable value of the securities, which shall be conditioned upon the faithful performance of the provisions of this part, shall not be less than six hundred dollars ($600) for each estimated acre or fraction thereof affected by the respective operation. Liability under such bond shall be continuous until the reclamation provisions of this part have been fulfilled. The amount of the bond shall be increased or decreased to take account of any change in the acreage covered by the permit as provided in § 59-8-205(a)(2).

(c) In those counties requiring a performance bond of two thousand dollars ($2,000) or more per acre, the operator may at the operator's option present evidence of such bond to the commissioner in lieu of filing a bond with the commissioner. The commissioner may in the commissioner's discretion accept such evidence of the existence of such a performance bond in lieu of a bond filed with the commissioner. However, if the bond is released by county authorities prior to such time as the commissioner would normally release all or part of it, the commissioner may require a new performance bond to be filed as required by this section.

(d) No performance bond shall be charged for land upon which overburden is deposited if, in the opinion of the commissioner, the deposition of such overburden amounts to reclamation of a previously mined area.

History.

Acts 1972, ch. 547, § 7; 1974, ch. 590, §§ 5, 12; T.C.A., § 58-1546; Acts 1980, ch. 908, § 42; 2009, ch. 211, § 2.

Compiler's Notes.

For the Preamble to the act concerning reclamation after extraction of minerals on state-owned land, please refer to Acts 2009, ch. 211.

NOTES TO DECISIONS

1. Amount of Bond Forfeited.

In the absence of expressed or implied provisions to the contrary, where a bond is given to a public body as a condition for obtaining a permit and the bond is conditioned on compliance with a specific statute and the rules and regulations promulgated and adopted by the commissioner of environment and conservation, the full penalty of such bond is recoverable in the event of a breach. State v. Gulf American Fire & Casualty Co., 680 S.W.2d 455, 1984 Tenn. LEXIS 876 (Tenn. 1984).

A bond under title 59, ch. 8 is penal in nature and the full amount must be forfeited, not just the amount of damages suffered and proved by the state. State v. Gulf American Fire & Casualty Co., 680 S.W.2d 455, 1984 Tenn. LEXIS 876 (Tenn. 1984).

59-8-208. Mining and reclamation plans.

(a) Each operator shall prepare and carry out a mining and reclamation plan for the area affected by the operator's operation, such plan to be submitted by the operator for the commissioner's approval with the application for a permit. Such plan shall provide for:

(1) Regrading the area to approximately the original or rolling topography, and elimination of all highwalls, spoil piles, and water-collecting depressions to the extent that such can be done with available overburden.

Demonstrated new technology methods, approved by the commissioner, will be acceptable for highwall elimination and those established spoil piles, which no longer pose hazards to the environment as determined by the commissioner, shall not be included;

(2) Water drainage and silt control for all the affected areas so as to strictly control soil erosion, damage to adjacent lands, and pollution of streams and other waters, both during and following the mining operations. As mining begins, all drainways for the affected area shall be protected with silt traps or dams of approved design as directed by the regulations. The operator may elect to impound water to provide lakes or ponds of approved design for wildlife, recreational, or water supply purposes if it is a part of the approved reclamation plan;

(3) Revegetation of the affected area as provided in § 59-8-209;

(4) If the land is restored to permit cultivating with normal farm machinery, the operator is relieved of all further rehabilitation, except seeding with grass or legumes during the next growing season for quick erosion control;

(5) Carrying out any additional reclamation work required by the rules and regulations adopted by the commissioner;

(6) A description of the use to which the area affected will be placed at the conclusion of reclamation; and

(7) When mining is temporarily terminated at a particular mining site or sites with substantial minerals remaining for probable future production, the operator is permitted to reclaim mined areas other than those included in the operator's current operations in lieu of reclaiming the mined areas where the mining has temporarily ceased.

(b) In addition to the requirements specified in subsection (a), the mining and reclamation plan submitted by the operator in connection with the operator's application for a permit shall include a detailed topographic map, prepared by a qualified engineer, geologist or other qualified professional approved by the commissioner, on a United States geological survey map, or aerial photograph, or equivalent as may be approved by the commissioner, and on such scale as the commissioner shall require by regulation showing:

(1) The area of land affected, the location of the stream or streams or any standing body of water into which the area drains, the location of drainways and the planned siltation traps and other impoundments, and the location of haul or other access roads to be prepared or used by the operator in the mining operation;

(2) The location of any buildings, cemeteries, public highways, railroad tracks, gas and oil wells, publicly owned land, officially designated scenic areas, utility lines, underground mines, transmission lines or pipe lines within the affected area or within five hundred feet (500′) thereof;

(3) The approximate location of the cuts or excavations to be made in the surface and the estimated location and height of spoil banks, and the total number of acres involved in the area of land affected; and

(4) The date the map was prepared, together with a certification as to its accuracy by the person responsible for its preparation.

(c) The surface mining application will be accompanied by a detailed mining plan showing the depth and character of overburden; the thickness of the

mineral being mined; method of mining; mine waste disposal areas; the manner, timing and distance for backfilling, grading work; final mine waste disposal areas and final shape of stable slope; and a reclamation plan for haul roads that are to be left, which proposals shall meet the provisions of this section and all rules and regulations adopted pursuant thereto by the commissioner. The application shall assure that all reshaping will be completed within such time as permitted by the commissioner's regulations which shall not be more than three (3) months, weather permitting, after completion of the removal of the mineral being mined.

(d) The mining and reclamation plan may, with the commissioner's approval, be changed at any time upon application of the operator, to take account of changes in conditions or to correct any previous oversight. After approval of a mining and reclamation plan or any amendment thereof by the commissioner, the operator shall not depart therefrom without the commissioner's further approval. The plan shall be carried out concurrently with the surface mining operation and all of the reclamation work shall be completed with respect to each acre within such time as permitted by the commissioner's regulations, which shall not be more than one (1) year after completion of the mining operation with respect to each such acre. Each operator shall file periodic reports, within such times and covering such periods as the commissioner shall reasonably require, showing those portions of the affected area for which reclamation in accordance with the approved plan has been completed. The commissioner shall inspect such areas and shall notify the operator whether the reclamation is accepted as being in accordance with the approved plan or whether there are deficiencies which must be corrected.

(e) Any plan required by this section or part shall be prepared in accordance with the procedures set out in title 13, chapter 18 when such plan involves a major energy project, as defined in § 13-18-102.

History.
Acts 1972, ch. 547, § 8; 1974, ch. 590, §§ 6, 7; 1975, ch. 310, § 2; 1976, ch. 752, § 2; 1978, ch. 679, § 2; T.C.A., § 58-1547; Acts 1980, ch. 695, § 3; 1980, ch. 908, § 43; 1981, ch. 131, § 38; 1992, ch. 1011, § 1.

59-8-209. Revegetation plan.

(a) Each operator shall submit for the commissioner's approval and carry out after such approval a plan for preparation of the soil and subsequent revegetation of the affected area. Such plan shall take into consideration the approved after-use of the area affected and shall be designed to achieve quick and permanent soil stabilization by the planting of trees or shrubs or grasses or legumes or any prescribed combination thereof. The operator's obligation under the provisions of this part shall not be deemed discharged until the operator has provided revegetation which conforms to the revegetation standards established by the commissioner.

(b) After the initial planting of the vegetative cover in accordance with the approved plan, the commissioner shall issue to the operator and the operator's surety a release of the surety bond for each acre of the affected area with respect to which the approved reclamation plan has been carried out, less the sum of three hundred dollars ($300) which shall be in force and effect until satisfactory revegetation survival has been accomplished, the revegetation

plan previously approved by the commissioner has been carried out, the commissioner has determined that further efforts toward revegetation are impractical, or until it has been forfeited by the operator.

History.
Acts 1972, ch. 547, § 9; 1974, ch. 590, § 8; T.C.A., § 58-1548; Acts 1980, ch. 695, § 4; 1980, ch. 908, § 44.

59-8-210. Annual report to be filed with commissioner.

Within such time as the commissioner shall prescribe, the operator shall file with the commissioner an annual report and map under each permit, stating the number of acres of land affected by the operation, the extent of reclamation and revegetation accomplished by the operator, and such other information as the commissioner may reasonably require in carrying out the provisions of this part. If the report and the commissioner's inspection of the area affected show that the operator has complied fully with this part, the commissioner shall approve the report and shall release the operator's bond, or the remainder thereof if any portion has already been released under other provisions of this part. If the commissioner does not approve the report, the bond shall not be released until the operator corrects the deficiencies found by the commissioner.

History.
Acts 1972, ch. 547, § 10; T.C.A., § 58-1549.

59-8-211. Notice of noncompliance — Forfeiture of bond.

(a) If any of the requirements of this part or rules and regulations adopted pursuant thereto or the orders of the commissioner have not been complied with within the time limits set by the commissioner or by this part, the commissioner shall cause a notice of noncompliance to be served upon the operator, or, where found necessary, the commissioner shall order suspension of a permit. Such notice or order shall be handed to the operator in person or served by certified mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this chapter or the regulations or orders of the commissioner.

(b) If the operator has not reached an agreement with the commissioner or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the commissioner and the performance bond shall then be forfeited to the commissioner. When a bond is forfeited pursuant to this part, the commissioner shall give notice to the attorney general and reporter who shall collect the forfeiture.

History.
Acts 1972, ch. 547, § 11; T.C.A., § 58-1550.

NOTES TO DECISIONS

1. Amount of Bond Forfeited.
In the absence of expressed or implied provisions to the contrary, where a bond is given to a public body as a condition for obtaining a permit and the bond is conditioned on compliance with a specific statute and the rules and regu-

lations promulgated and adopted by the commissioner, the full penalty of such bond is recoverable in the event of a breach. State v. Gulf American Fire & Casualty Co., 680 S.W.2d 455, 1984 Tenn. LEXIS 876 (Tenn. 1984).

A bond under title 59, ch. 8 is penal in nature and the full amount must be forfeited, not just the amount of damages suffered and proved by the state. State v. Gulf American Fire & Casualty Co., 680 S.W.2d 455, 1984 Tenn. LEXIS 876 (Tenn. 1984).

59-8-212. Tennessee surface mine reclamation fund — Other available funds. [Current version. See second version of section and Compiler's Notes.]

All sums received through the payment of fees or the forfeiture of bonds shall be placed in the state treasury and credited to a special agency account to be designated as the Tennessee surface mine reclamation fund. This fund, appropriations for which are also authorized, shall be available to the commissioner for expenditure for the reclamation and revegetation of land affected by surface mining operations, including lands so affected prior to enactment of this part; provided, that the proceeds from the forfeiture of any bond shall be used to the extent required in completing reclamation and revegetation of the area with respect to which the bond was posted. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purpose of reclamation and revegetation of land as provided in this section until expended.

History.

Acts 1972, ch. 547, § 12; 1974, ch. 590, § 1; T.C.A., § 58-1551; Acts 1980, ch. 908, § 45.

NOTES TO DECISIONS

1. Legislative Intent.

The language that the proceeds from the forfeiture of a bond shall be "used to the extent required in completing reclamation and revegetation" of the area with respect to which the bond was posted indicated that the legislature contemplated that some amount would remain after the proceeds of the forfeited bond had been used to reclaim the land for which the bond was posted. This would not be true if the state were to recover only the amount necessary for reclamation or only the amount of damages it had suffered because of noncompliance. State v. Gulf American Fire & Casualty Co., 680 S.W.2d 455, 1984 Tenn. LEXIS 876 (Tenn. 1984).

59-8-212. Tennessee surface mine reclamation fund — Other available funds. [Contingent amendment. See first version of section and Compiler's Notes.]

All sums received through the payment of fees or the forfeiture of bonds shall be placed in the state treasury and credited to a special agency account to be designated as the Tennessee surface mine reclamation fund. This fund, appropriations for which are also authorized, shall be available to the commissioner for expenditure for the reclamation and revegetation of land affected by surface mining operations, including lands so affected prior to enactment of this part; provided, that the proceeds from the forfeiture of any bond shall be used to the extent required in completing reclamation and revegetation of the area with respect to which the bond was posted. The fund shall also be available to the commissioner for expenditures consistent with

§ 59-8-104. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purpose of reclamation and revegetation of land as provided in this section until expended.

History.

Acts 1972, ch. 547, § 12; 1974, ch. 590, § 1; T.C.A., § 58-1551; Acts 1980, ch. 908, § 45; 2018, ch. 839, § 2.

Compiler's Notes.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that for purposes of rulemaking, the act, which amended this section, shall take effect upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment added the present third sentence.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

NOTES TO DECISIONS

1. Legislative Intent.

The language that the proceeds from the forfeiture of a bond shall be "used to the extent required in completing reclamation and revegetation" of the area with respect to which the bond was posted indicated that the legislature contemplated that some amount would remain after the proceeds of the forfeited bond had been used to reclaim the land for which the bond was posted. This would not be true if the state were to recover only the amount necessary for reclamation or only the amount of damages it had suffered because of noncompliance. State v. Gulf American Fire & Casualty Co., 680 S.W.2d 455, 1984 Tenn. LEXIS 876 (Tenn. 1984).

59-8-213. Utilizing services of other agencies or persons — Compensation — Funding.

(a) In the reclamation of land affected by surface mining, the commissioner may utilize any services which may be provided by other state or local agencies or by agencies of the federal government, and may compensate them for such service. The commissioner may also receive any federal funds, state funds, or any other funds for the reclamation of land affected by surface mining. The commissioner may cause the reclamation and revegetation work to be done by employees of the commissioner's department or by employees of other governmental agencies or through contracts with qualified persons. Such contracts shall be awarded to the lowest or best bidder upon competitive bids after reasonable advertisement.

(b) Any funds available to the commissioner and any public works program may be used and expended to reclaim any lands that have been subjected to surface mining that have not been reclaimed in accordance with standards set by this part or regulations thereunder and which are not covered by bond to guarantee such reclamation.

History.
Acts 1972, ch. 547, § 13; T.C.A., § 58-1552.

59-8-214. Right of access.

The designees of the commissioner and any other agency and any contractor under a contract with the commissioner shall have the right of access to the land affected to carry out reclamation.

History.
Acts 1972, ch. 547, § 13; T.C.A., § 58-1552.

59-8-215. State's power to acquire land affected by surface mining.

(a) This state, acting by and through the department, shall have the power to acquire, either by negotiation or by exercise of the power of eminent domain, land which has been affected or disturbed by surface mining, which now consists of orphan banks or unreclaimed spoil piles, and which in its present state is hazardous or otherwise detrimental to the health and safety of the citizens of the state, or which in its present state is damaging to off-site property or to the water quality of streams.

(b) Prior to acquiring any land pursuant to this section, the commissioner shall extend to the owners thereof an opportunity to reshape, plant and do other acts or reclamation thereon to the same extent and within the same time limits as prescribed in this part and regulations adopted pursuant thereto. If the owner or owners agree in writing to perform such reclamation and, weather permitting, start such reclamation within a period of sixty (60) days, the land shall not be acquired by the state.

(c) The commissioner shall attempt to purchase any land which the commissioner has determined should be acquired for the purpose of reclamation and which the owners have not agreed to reclaim as provided in subsection (b). In any case where the commissioner and the owners of the land are unable to agree upon the amount to be paid for the land, the commissioner may exercise the power of eminent domain against such land by filing a condemnation suit under any procedure as provided in title 29, chapter 16.

(d) The purchase price, in the case of a negotiated acquisition, or the damages as finally determined, in the case of acquisition by condemnation, and the necessary expenses incidental thereto, shall be paid from the Tennessee surface mine reclamation fund or appropriations made by the general assembly for such purposes and appropriations for which federal funds made available for such purposes have been credited.

History.
Acts 1972, ch. 547, § 14; T.C.A., § 58-1553;
Acts 1980, ch. 908, § 46.

59-8-216. Commissioner's power to effect reclamation subject to availability of funds.

The commissioner shall have the power to backfill, grade, plant and perform other acts of reclamation or contract for the performance of such reclamation work, on any lands acquired under § 59-8-215, to the extent and subject to

such conditions as state or federal funds are appropriated and available therefor.

History.
Acts 1972, ch. 547, § 15; T.C.A., § 58-1554.

59-8-217. Acquisitions and disposals of land after reclamation.

(a) After the reclamation of the acquired land, the commissioner may, with the approval of the governor, transfer jurisdiction of such land, or any portion thereof, to any state agency that can best utilize such land for public purposes. If the retention of such land is determined to be impractical, the commissioner may, with the approval of the governor and attorney general and reporter, sell such land to political subdivisions of this state at the cost of acquisition and reclamation or by public sale to the highest bidder. Such land shall be sold subject to the condition that no surface mining shall be conducted thereon at any time thereafter. The proceeds of any such sale shall be credited to the Tennessee surface mine reclamation fund as provided in § 59-8-212.

(b) No land with respect to which a bond conditioned upon the reclamation thereof is in effect shall be acquired pursuant to § 59-8-215, nor shall this part be construed to relieve any person from any obligation to shape, plant or perform other reclamation required by law.

(c) All acquisitions and disposals of land or any interest therein pursuant to the authority granted by this part shall be governed by the applicable provisions of title 12, chapters 1 and 2.

History.
Acts 1972, ch. 547, § 16; T.C.A., § 58-1555;
Acts 1980, ch. 908, § 47.

59-8-218 — 59-8-221. [Reserved.]

59-8-222. Civil and criminal penalties — Enforcement — Rights preserved.

(a) Any person or operator who violates any of this part or regulations adopted pursuant thereto, or who fails to perform the duties imposed by these provisions or fails or refuses to obtain a permit as provided herein, or who violates any determination or order promulgated pursuant to this part, is liable to a civil penalty of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) for each day during which such violation continues, and in addition, may be enjoined from continuing such violation as hereinafter provided. Such penalties shall be recoverable in an action brought in the name of the state of Tennessee by the attorney general in the circuit court of Davidson County or in the circuit court having jurisdiction of the defendant, and all sums recovered shall be placed in the state treasury and credited to the Tennessee surface mining reclamation fund.

(b) It shall be the duty of the district attorneys general in the various circuits throughout the state, or the attorney general, upon the request of the commissioner, to bring an action for the recovery of the penalties herein provided for and to bring an action for a restraining order, temporary or

permanent injunction, against any operator or other person violating or threatening to violate any of the provisions of this part or violating or threatening to violate any order or determination promulgated pursuant to this part.

(c) Any person who willfully and knowingly unlawfully falsifies any records, information, plans, specifications, or other data required by the board or the commissioner or who willfully fails, neglects, or refuses to comply with any of the provisions of this part is guilty of a Class B misdemeanor; provided, that no process by warrant, presentment or indictment shall be issued except upon application of the board or commissioner or such application for process authorized by them.

(d) Nothing in this part shall abrogate the right of any person who is materially or personally damaged or injured by the operation of a surface mine to seek remedies against the responsible person in the courts.

History.

Acts 1972, ch. 547, § 20; T.C.A., § 58-1560; Acts 1980, ch. 908, § 49; 1989, ch. 591, § 112.

Cross-References.

Penalty for Class B misdemeanor, § 40-35-11.

Textbooks.

Tennessee Jurisprudence, 3 Tenn. Juris., Attorney General, § 4; 18 Tenn. Juris., Mines and Minerals, § 3.

NOTES TO DECISIONS

1. Effect of Bankruptcy.

A judgment representing a civil penalty for violations of the Tennessee Surface Mining Law is excepted by 11 U.S.C. § 523(a)(7) from a debtor's discharge in bankruptcy. In re Daugherty, 25 B.R. 158, 1982 Bankr. LEXIS 5420 (Bankr. E.D. Tenn. 1982).

59-8-223. Injunctive relief.

(a) When there is reason to believe that a person is violating or is about to violate or has violated any of the provisions of this part or any permits or orders issued thereunder, the commissioner may institute proceedings in the chancery court of the county in which the alleged violation occurred for injunctive relief to prevent continuance of such action or to correct the conditions resulting or about to result therefrom or both. The court shall grant the injunction without the necessity of showing a lack of adequate remedy at law upon a showing by the commissioner that such person is violating or about to violate or has violated one (1) or more of the provisions of this part. In such suits, the commissioner may obtain permanent or temporary injunctions, prohibitory or mandatory, and restraining orders.

(b) The commissioner may bring suit for injunctive enforcement of any order made by the commissioner when such order has become final as a result of any person's failure to appeal to the board, and such person has failed to comply with the order. In such suits, all findings of fact contained in the order and complaint shall be deemed to be final, and not subject to review except as to receipt of notice of the order, but the defendant may proffer evidence showing that the defendant has in fact complied with the commissioner's order. The order made by the commissioner in such cases shall be prima facie reasonable and valid, and it shall be presumed that the commissioner has complied with

all requirements of the law. The board may likewise bring suit for enforcement of any order made by it, which has become final either by the failure of any person to appeal the board's order or by an appellate court's decision against any person who fails to comply with such final order. In such suits, the board's decision shall not be subject to challenge as to matters of law or fact, but the violator may proffer evidence showing that the violator has in fact complied with the board's order.

(c) Any suit for an injunction brought by the commissioner shall be filed in the chancery court of the county in which all or a part of the violation is or is about to occur, in the name of the department, by the district attorney general or by the attorney general at the direction of the commissioner or the board and under the supervision of the attorney general. Such proceedings shall not be tried by jury. Appeals from judgments or decrees of the chancery court in proceedings brought under the provisions of this part shall lie to the supreme court despite the fact that controverted questions of fact may be involved.

History.
Acts 1972, ch. 547, § 21; 1974, ch. 590, § 10; T.C.A., § 58-1561.

Textbooks.
Tennessee Jurisprudence, 18 Tenn. Juris., Mines and Minerals, § 3.

59-8-224. Supplemental nature of part.

This part shall not operate to repeal or affect any of the laws of the state relating to the pollution of the air or waters thereof, or any conservation or mining laws, but shall be held and construed as ancillary and supplemental thereto.

History.
Acts 1972, ch. 547, § 22; T.C.A., § 58-1562.

59-8-225. Immediate conformity to statutes or regulations required.

Irrespective of date of issuance of a permit, all operators shall immediately conform to any statutes enacted or regulations adopted pursuant thereto on the effective date of such statute or regulation. This section shall not require the regrading or replanting of any area on which such work was satisfactorily performed prior to the effective date of the statute or regulation.

History.
Acts 1972, ch. 547, § 23; T.C.A., § 58-1563.

59-8-226. Sanctions applicable only to mines in violation.

It is the intent of this part, and it is so understood that the commissioner is empowered under all the provisions of this part to suspend or revoke a mining permit or fail to grant a mining permit only to the extent of the one (1) or more mines that, in the opinion of the commissioner, violate or violates the provisions of such sections, and the commissioner is not empowered to shut down, suspend a mining permit, or fail to grant a mining permit on the other mines or prospective mines of the operator that are in compliance with the provisions of this part. In no event is the commissioner empowered to shut down any of the operations of an operator except the actual operation of the

mine or mines, that, in the commissioner's opinion, violate the provisions of this part.

History.
Acts 1972, ch. 547, § 24; T.C.A., § 58-1564.

59-8-227. [Reserved.]

59-8-228. Certain exploratory drilling regulated under Mineral Test Hole Regulatory Act exclusively.

Notwithstanding any law to the contrary, any exploration for minerals which is conducted solely by drilling or any other method which results in a drill hole of a diameter of six inches (6″) or less shall be regulated only under former chapter 9 [repealed] of this title.

History.
Acts 1980, ch. 695, § 5.

Compiler's Notes.
Former chapter 9 of this title was repealed by Acts 1982, ch. 583.

PART 3

TENNESSEE COAL SURFACE MINING LAW OF 1980

59-8-301. State's power to acquire and reclaim land disturbed by past mining.

(a) This state, acting by and through the department of environment and conservation, may acquire any property, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if the commissioner determines that acquisition of such land is necessary to successful reclamation and that:

(1) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; and

(2) Permanent facilities such as treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(3) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this part or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of coal mining practices.

(b) Prior to the acquisition of any property pursuant to this section, using exclusively state funds, the commissioner shall extend to the owners of the property an opportunity to regrade the area affected, correct drainage problems, plant vegetative cover, and do other acts of reclamation as required by the commissioner. If the owner or owners agree in writing to perform such

reclamation and, weather permitting, start such reclamation within a period of sixty (60) days, and continue to completion, the property shall not be acquired by the state.

(c) The commissioner shall attempt to purchase any property which the commissioner has determined should be acquired for the purpose of reclamation using exclusively state funds and which the owners have not agreed to reclaim as provided for in subsection (b). Where the commissioner and the owners of the property are unable to agree upon the amount to be paid for such property, the commissioner may exercise the power of eminent domain against such property.

(d) The purchase price, in the case of a negotiated acquisition, or the damages as finally determined in the case of acquisition by condemnation, and the necessary expenses incidental thereto, shall be paid from the Tennessee surface mine reclamation fund, the federal abandoned mine reclamation fund with the approval of the secretary, or from appropriations made by the general assembly for such purposes.

(e) The commissioner, or the commissioner's agents, employees, or contractors, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare, and shall not be construed as an act of condemnation of property nor trespass thereon.

(f) If the commissioner makes a finding of fact that:

(1) Land or water resources have been adversely affected by past coal mining practices; and

(2) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or

(4) The owners will not give permission for the commissioner, the commissioner's agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

then, upon giving notice by mail to the owners if known, or if not known, by posting notice upon the property and advertising once in a newspaper of general circulation in the county in which the property lies, the state shall have the right to enter upon the property adversely affected by past coal mining practices, and any other property which is necessary for access to such property, to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such property so entered upon shall be chargeable against such property, and shall mitigate or offset any claim or action brought

by any owner of any interest in such property for any alleged damages by virtue of such entry; provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

(g) Title to all property acquired pursuant to this section shall be in the name of the state of Tennessee. The price paid for property acquired under this section shall reflect the market value of the property in its unreclaimed condition as adversely affected by past coal mining practices.

(h) After the reclamation of the acquired property, the commissioner may, with the approval of the governor, where property has been reclaimed exclusively with state funds, or with the approval of the secretary, where funds from the federal abandoned mine reclamation fund have been used, transfer jurisdiction of such property or any portion thereof to any state or federal agency that can best utilize such property for public purposes. If the retention of any property is determined to be impractical, the commissioner may, with the approval of the governor and attorney general and reporter, where property has been reclaimed exclusively with state funds, or with the approval of the secretary, where funds from the federal abandoned mine reclamation fund have been used, sell such property at not less than fair market value to political subdivisions of the state or by public sale under a system of competitive bidding at not less than fair market value and under such other regulations promulgated to ensure that such lands are put to proper use consistent with local and state land use plans, if any. Such property shall be sold subject to the condition that no surface mining shall be conducted thereon at any time thereafter. The proceeds of any such sale shall be credited to the Tennessee surface mine reclamation fund provided for in § 59-8-212 if it has been reclaimed exclusively with state funds, or to the federal abandoned mine reclamation fund, if it has been reclaimed with funds from that source.

(i) No property with respect to which a bond conditioned upon the reclamation thereof is in effect shall be acquired pursuant to this section, nor shall any provisions of this part be construed to relieve any person from any obligation to regrade, vegetate or perform other reclamation required by law.

(j) All acquisitions and disposals of property or any interest therein pursuant to the authority granted by this part, shall be governed by the applicable provisions of title 12, chapters 1 and 2, where not inconsistent with the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. §§ 1201-1328).

(k) The commissioner, when requested after appropriate public notice, shall hold a public hearing in the county or counties in which property acquired pursuant to this section is located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the property after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(*l*) In addition to the authority to acquire property under this section, this state, and its political subdivisions, acting by and through the department, are authorized to accept property transferred by the secretary, if the secretary determines that such transfer is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing

for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effect of coal mining practices which constitute an emergency as provided in 30 U.S.C. § 1240, or persons dislocated as the result of natural disasters or catastrophic failures from any cause. Such activities shall be accomplished under such terms and conditions as the secretary shall require, which may include transfers of land with or without monetary consideration; provided, that, to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. No part of the funds provided under this part may be used to pay the actual construction costs of housing. The secretary may carry out the purposes of this subsection (*l*) directly or the secretary may make grants and commitments for grants, and may advance money under such terms and conditions as the secretary may require to the state, or any department, agency, or instrumentality of the state, or any public body or nonprofit organization designated by the commissioner.

(m) In the reclamation of property affected by surface coal mining, the commissioner may utilize any services which may be provided by other state or local agencies or by agencies of the federal government, and may compensate them for such services. The commissioner may also receive any federal funds, state funds, or any other funds for the reclamation of property affected by surface coal mining. The commissioner may cause the reclamation and revegetation work to be done by employees of the commissioner's own department or by employees of other governmental agencies or through contracts with qualified persons. Such contracts shall be awarded to the lowest and best bidder upon competitive bids after reasonable advertisement. The designees of the commissioner and any other agency and any contractor under a contract with the commissioner shall have the right of access to the property affected to carry out such reclamation. Any funds available to the commissioner and any public works program may be used and expended to reclaim any property that has been subjected to surface mining that has not been reclaimed in accordance with standards set by this part or regulations thereunder and which are not covered by bond to guarantee such reclamation.

History.
Acts 1980, ch. 908, § 24; 1984, ch. 837, § 3; T.C.A. § 59-8-324.

Code Commission Notes. This section was renumbered from § 59-8-324 by authority of the Code Commission in 2018.

Compiler's Notes.
Former §§ 59-8-301 — 59-8-320 (Acts 1980, ch. 908, §§ 1-20; 1981, ch. 100, §§ 1, 2; 1981, ch. 131, §§ 39-42; 1981, ch. 169, §§ 1, 4, 5; 1981, ch. 280, §§ 1-7, 10; 1983, ch. 121, § 1; 1983, ch. 204, §§ 1, 2), concerning coal surface mining, were repealed by Acts 1984, ch. 837, § 1. For the Coal Surface Mining Act of 1987, see title 59, ch. 8, part 4.

Cross-References.
Eminent domain, title 29, ch. 16.

59-8-302. Liens.

(a) Whenever the commissioner begins to expend money on a project to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned property under § 59-8-301(f), the commissioner

may file a notice with the office of the register of deeds of the county in which the property lies.

(b)(1) Within six (6) months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned property under § 59-8-301(f), the commissioner shall itemize the moneys so expended and shall file a statement thereof in the office of the register of deeds of the county in which the property lies, together with notarized appraisals by an independent appraiser of the value of the property before and after the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices, if the moneys so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon such land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the property as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this subsection (b), who owned the surface prior to May 2, 1977, and who neither consented to nor participated in, nor exercised control over, the mining operation which necessitated the reclamation performed hereunder.

(2) In the year following the year in which the lien is filed in the designated county office and for each year thereafter until the lien is fully satisfied, the designees of the commissioner shall calculate an annual interest charge of five percent (5%) against the outstanding value of each lien, and shall maintain a record of the charges owing against such lien which shall be made available to the property owner upon request. This interest charge may be allowed to accrue but must be paid in full before the lien shall be considered fully satisfied and shall be released.

(c) The property owner may proceed as provided by law to petition within sixty (60) days of the filing of the lien, to determine the increase in the market value of the property as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount appraised to be the increase in value of the property shall constitute the amount of the lien, and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by state law.

(d) The lien provided in this section shall be entered in the records of the register of deeds of the county in which the property lies. Such statements shall constitute a lien upon such property as of the date notice is filed pursuant to subsection (a), and shall have priority from the day of such filing of notice, but shall not affect, or have priority over, any valid lien, right, or interest in the property duly recorded, or duly perfected by filing, prior to the filing of the notice and shall not have priority over any real estate tax liens, whether attaching on the property before or after the filing of the notice. A lien on private property, and the accrued interest charges placed thereon, shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership, any other statute to the contrary notwithstanding.

(e) A form of notice substantially as follows is sufficient to comply with subsection (a):

NOTICE OF LIEN UNDER TENNESSEE COAL SURFACE MINING LAW OF 1980

Name of titleholder(s) .....

Property address .....

Description of property subject to possible lien sufficient to identify such property .....

Date, signature, and address of the commissioner or the commissioner's authorized designee .....

The register of deeds shall note the date and time of filing, and an appropriate registration number, and shall record the notice in the lien book in the office of the register.

(f) The effective date of all prior liens claimed under this chapter shall be unaffected by the 1986 amendment to this section if a notice is filed in accordance with subsection (a) on or before December 31, 1986, which notice shall set forth, in addition to the information required by subsection (e), the claimed effective date of the lien if earlier than the date of the filing of the notice. After December 31, 1986, all claimed liens shall be effective as of the date the notice is filed pursuant to subsection (a).

History.

Acts 1980, ch. 908, § 25; 1983, ch. 147, §§ 1, 2; 1984, ch. 837, § 4; 1986, ch. 529, § 1; 1988, ch. 549, § 1; T.C.A. § 59-8-325.

Code Commission Notes. This section was renumbered from § 59-8-325 by authority of the Code Commission in 2018.

Compiler's Notes.

The 1986 amendment to this section, referred to in subsection (f), added (a), (e), and (f) and amended (d).

Former §§ 59-8-301 — 59-8-320 (Acts 1980, ch. 908, §§ 1-20; 1981, ch. 100, §§ 1, 2; 1981, ch. 131, §§ 39-42; 1981, ch. 169, §§ 1, 4, 5; 1981, ch. 280, §§ 1-7, 10; 1983, ch. 121, § 1; 1983, ch. 204, §§ 1, 2), concerning coal surface mining, were repealed by Acts 1984, ch. 837, § 1. For the Coal Surface Mining Act of 1987, see title 59, ch. 8, part 4.

Cross-References.

Recording and enforcement of liens, §§ 66-21-101 — 66-21-104, 66-21-106 — 66-21-107, 66-21-109, title 66, ch. 21, part 2.

Law Reviews.

Selected Tennessee Legislation of 1986, 54 Tenn. L. Rev. 457 (1987).

59-8-303. Tennessee surface mine reclamation fund.

(a) All sums received through the payment of permit and acreage fees, fines, penalties, or the forfeiture of bonds, shall be placed in the state treasury and credited to a special agency account to be designated as the Tennessee surface mine reclamation fund.

(b) This fund, appropriations for which are also authorized, shall be available to the commissioner for expenditure for reclamation and revegetation of land and water affected by mining and exploration operations both on and off site and related research, including areas so affected prior to May 2, 1980.

(c) Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward until expended for the purpose of research, reclamation, and revegetation of land and water affected by mining and exploration operations as provided in this section.

(d) Any portion of the fund which represents permit and acreage fees and interest thereon shall be transferred to the department for administration and enforcement of this part. All such revenue and any interest thereon which is

unexpended or unobligated at the end of any fiscal year shall not revert to the general fund but shall be carried forward in a reserve to remain available for expenditure by the department for such administration and enforcement. Such reserve shall not be subject to allotment impoundment and shall be maintained on a no quarter basis. Such reserve may also be expended by the department to develop a program to obtain primacy for the regulation and enforcement of surface mining activities pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. §§ 1201 — 1328).

History.
Acts 1980, ch. 908, § 26; 1984, ch. 837, § 5; 1987, ch. 251, § 2; T.C.A. § 59-8-326.

Code Commission Notes. This section was renumbered from § 59-8-326 by authority of the Code Commission in 2018.

Compiler's Notes.
Former §§ 59-8-301 — 59-8-320 (Acts 1980, ch. 908, §§ 1-20; 1981, ch. 100, §§ 1, 2; 1981, ch. 131, §§ 39-42; 1981, ch. 169, §§ 1, 4, 5; 1981, ch. 280, §§ 1-7, 10; 1983, ch. 121, § 1; 1983, ch. 204, §§ 1, 2), concerning coal surface mining, were repealed by Acts 1984, ch. 837, § 1. For the Coal Surface Mining Act of 1987, see title 59, ch. 8, part 4.

59-8-304. Definitions for §§ 59-8-304 — 59-8-309. [See contingent amendment to subdivision (1) and the Compiler's Notes.]

As used in §§ 59-8-304 — 59-8-309, unless the context otherwise requires:

(1) **[Current version. See second version for contingent amendment and Compiler's Notes.]** "Board" means the Tennessee board of water quality, oil, and gas [See the Compiler's Notes] as created by [former] § 59-8-321 [repealed. See Compiler's Notes];

(1) **[Contingent amendment. See the Compiler's Notes.]** "Board" means the Tennessee board of energy and natural resources created by § 69-3-104;

(2) "Commissioner" means the commissioner of environment and conservation, the commissioner of environment and conservation's duly authorized representatives, and in the event of absence or a vacancy in the office of commissioner, the deputy commissioner;

(3) "Department" means the department of environment and conservation; and

(4) "Director" means the director of the division of water pollution control in the department of environment and conservation.

History.
Acts 1984, ch. 837, § 6; 1987, ch. 251, § 3; 1992, ch. 693, § 1; T.C.A § 59-8-351; Acts 2018, ch. 839, § 6.

Code Commission Notes. This section was renumbered from § 59-8-351 by authority of the Code Commission in 2018.

Compiler's Notes.
Former § 59-8-321, referred to in this section, was repealed by Acts 1991, ch. 117, § 2(b). The duties of the former board of reclamation review were transferred to the former water quality control board created by § 69-3-104, by Acts 1991, ch. 117, § 4. The former water quality control board, created by § 69-3-104, was terminated by Acts 2012, ch. 986, § 26, and its responsibilities were transferred to the Tennessee board of water quality, oil, and gas, created by § 69-3-104.

Former §§ 59-8-301 — 59-8-320 (Acts 1980, ch. 908, §§ 1-20; 1981, ch. 100, §§ 1, 2; 1981, ch. 131, §§ 39-42; 1981, ch. 169, §§ 1, 4, 5; 1981, ch. 280, §§ 1-7, 10; 1983, ch. 121, § 1; 1983, ch. 204, §§ 1, 2), concerning coal surface mining, were repealed by Acts 1984, ch. 837, § 1. For the Coal Surface Mining Act of 1987, see title 59, ch. 8, part 4.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applica-

tions for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking, upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment rewrote the definition of "board" by substituting "board of energy and natural resources, created by § 69-3-104" for "board of water quality, oil, and gas as established pursuant to former § 59-8-321".

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-305. Violations — Penalties.

(a) Any person who willfully and knowingly does any of the following acts is guilty of a Class E felony and, upon conviction, shall be punished by a fine of not more than ten thousand dollars ($10,000):

(1) Mines more than twenty-five (25) tons of coal within twelve (12) successive calendar months, regardless of the size of the mine site, without obtaining a permit for such mine from the commissioner or the primary regulatory authority pursuant to 30 U.S.C. § 1201 et seq., or without a permit for such mine obtained pursuant to this part prior to October 1, 1984;

(2) Knowingly and willfully violates this chapter, or the rules and regulations or orders of the commissioner, or knowingly falsifies an application for a permit; or

(3) Prevents or impedes an employee of the state from performing the employee's duty under this part, except as permitted by law.

(b) Whenever a corporation commits the acts described in this section, the director, officer or agent of such corporation who willfully and knowingly authorized, ordered or carried out such violation, failure or refusal shall be subject to the same fines and imprisonment that may be imposed under this section.

(c) All penalties and fines recovered under this section shall be placed in the state treasury and credited to the Tennessee surface mine reclamation fund.

History.

Acts 1984, ch. 837, § 6; 1987, ch. 251, § 4; 1989, ch. 591, § 77; T.C.A. § 59-8-352.

Code Commission Notes. This section was renumbered from § 59-8-352 by authority of the Code Commission in 2018.

Compiler's Notes.

Former §§ 59-8-301 — 59-8-320 (Acts 1980, ch. 908, §§ 1-20; 1981, ch. 100, §§ 1, 2; 1981, ch. 131, §§ 39-42; 1981, ch. 169, §§ 1, 4, 5; 1981, ch. 280, §§ 1-7, 10; 1983, ch. 121, § 1; 1983, ch. 204, §§ 1, 2), concerning coal surface mining, were repealed by Acts 1984, ch. 837, § 1. For the Coal Surface Mining Act of 1987, see title 59, ch. 8, part 4.

Cross-References.

Penalty for Class E felony, § 40-35-111.

Surface mine reclamation fund, § 59-8-326.

59-8-306. Applicability of prior law.

(a) Any person who obtained a permit from the state for coal surface mining prior to May 3, 1978, and whose bond had not been released in full, shall be subject to all requirements regarding the performance standards, permit,

bonding and reclamation in existence as of the date such permit was issued, which laws and regulations shall remain in full force and effect solely for the purpose of state regulation of such sites.

(b) Any person who obtained a permit from the state for coal surface mining prior to September 30, 1984, but after May 3, 1978, and upon whom bond forfeiture has been commenced by the department prior to October 1, 1984, shall be subject to all requirements regarding performance standards, permit, bonding and reclamation in existence as of the date such permit was issued, which laws and regulations shall remain in full force and effect for such purpose until the bond is collected or released. This subsection (b) shall be null and void if the secretary of the interior assumes any jurisdiction over such bond forfeitures.

(c) All penalty provisions and enforcement and administrative powers and duties in existence as of the date such permits were issued shall remain in force and effect for the administration and enforcement of subsections (a) and (b) by the commissioner and the department. All administrative review and judicial review for the purposes of this section shall be in accordance with [former] §§ 59-8-321 [repealed. See the Compiler's Notes] and [former] 59-8-322 [repealed. See the Compiler's Notes].

History.
Acts 1984, ch. 837, § 6; T.C.A. § 59-8-353.

Code Commission Notes. This section was renumbered from § 59-8-353 by authority of the Code Commission in 2018.

Compiler's Notes.
Former §§ 59-8-321 and 59-8-322, referred to in this section, concerning the former board of reclamation review, were repealed by Acts 1991, ch. 117, § 2(b). The duties of the former board of reclamation review were transferred to the former water quality control board created by § 69-3-104, by Acts 1991, ch. 117, § 4. The former water quality control board, created by § 69-3-104, was terminated by Acts 2012, ch. 986, § 26, and its responsibilities were transferred to the Tennessee board of water quality, oil, and gas, created by § 69-3-104.

Former §§ 59-8-301 — 59-8-320 (Acts 1980, ch. 908, §§ 1-20; 1981, ch. 100, §§ 1, 2; 1981, ch. 131, §§ 39-42; 1981, ch. 169, §§ 1, 4, 5; 1981, ch. 280, §§ 1-7, 10; 1983, ch. 121, § 1; 1983, ch. 204, §§ 1, 2), concerning coal surface mining, were repealed by Acts 1984, ch. 837, § 1. For the Coal Surface Mining Act of 1987, see title 59, ch. 8, part 4.

59-8-307. When permits required.

Any person who mines more than twenty-five (25) tons of coal within twelve (12) successive calendar months in this state, regardless of the size of the mine site, must obtain a permit for such mine from the commissioner or the primary regulatory authority.

History.
Acts 1984, ch. 837, § 6; 1987, ch. 251, § 5; T.C.A. § 59-8-354.

Code Commission Notes. This section was renumbered from § 59-8-354 by authority of the Code Commission in 2018.

Compiler's Notes.
Former §§ 59-8-301 — 59-8-320 (Acts 1980, ch. 908, §§ 1-20; 1981, ch. 100, §§ 1, 2; 1981, ch. 131, §§ 39-42; 1981, ch. 169, §§ 1, 4, 5; 1981, ch. 280, §§ 1-7, 10; 1983, ch. 121, § 1; 1983, ch. 204, §§ 1, 2), concerning coal surface mining, were repealed by Acts 1984, ch. 837, § 1. For the Coal Surface Mining Act of 1987, see title 59, ch. 8, part 4.

59-8-308. Commissioner and personnel — Powers.

The commissioner shall have the authority to:

(1) Employ and commission qualified persons as surface mine reclamation personnel. When properly qualified and commissioned, such personnel shall be vested with such authority as is necessary to enforce all laws, regulations, permits, and orders administered by the department, including the issuance of service of process and shall have the right to carry firearms or other arms while on duty;

(2) Make such investigations or inspections as are necessary to ensure compliance with any provisions of §§ 59-8-304 — 59-8-309, including the right to enter at any time upon a suspected or affected area for such purposes and the right of ingress and egress across intervening properties.

History.
Acts 1984, ch. 837, § 8; T.C.A. § 59-8-355.

Code Commission Notes. This section was renumbered from § 59-8-355 by authority of the Code Commission in 2018.

Compiler's Notes.
Former §§ 59-8-301 — 59-8-320 (Acts 1980, ch. 908, §§ 1-20; 1981, ch. 100, §§ 1, 2; 1981, ch. 131, §§ 39-42; 1981, ch. 169, §§ 1, 4, 5; 1981, ch. 280, §§ 1-7, 10; 1983, ch. 121, § 1; 1983, ch. 204, §§ 1, 2), concerning coal surface mining, were repealed by Acts 1984, ch. 837, § 1. For the Coal Surface Mining Act of 1987, see title 59, ch. 8, part 4.

59-8-309. Rules and regulations.

All rules and regulations promulgated and now in force for the abandoned mine land reclamation program, published by the secretary of state as chapter 0400-1-24 shall remain in full force and effect. All other rules and regulations promulgated pursuant to this part, except as otherwise provided in §§ 59-8-304 — 59-8-309, are repealed.

History.
Acts 1984, ch. 837, § 7; T.C.A. § 59-8-356.

Code Commission Notes. This section was renumbered from § 59-8-356 by authority of the Code Commission in 2018.

Compiler's Notes.
Former §§ 59-8-301 — 59-8-320 (Acts 1980, ch. 908, §§ 1-20; 1981, ch. 100, §§ 1, 2; 1981, ch. 131, §§ 39-42; 1981, ch. 169, §§ 1, 4, 5; 1981, ch. 280, §§ 1-7, 10; 1983, ch. 121, § 1; 1983, ch. 204, §§ 1, 2), concerning coal surface mining, were repealed by Acts 1984, ch. 837, § 1. For the Coal Surface Mining Act of 1987, see title 59, ch. 8, part 4.

PART 4

COAL SURFACE MINING ACT OF 1987

59-8-401. Short title.

This part shall be known and cited as the "Coal Surface Mining Act of 1987."

History.
Acts 1987, ch. 251, § 1.

59-8-402. Legislative findings and intent.

(a) The purpose of this part is to establish a regulatory program which will allow coal surface mining as defined herein for operations which are exempt from the jurisdiction of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.) consistent with adequate environmental

safeguards; except this part is not intended to regulate coal surface mining operations where less than twenty-five (25) tons of coal are removed within twelve (12) successive calendar months in any one (1) location regardless of the size of the area affected.

(b) The general assembly finds that although the surface mining of coal on operations disturbing two (2) surface acres or less within this state provides a significant present source of energy and employment, the proper control of surface mining of coal, so as to minimize or prevent adverse disruptions and the injurious effects thereof, requires thorough planning in selection of appropriate coal surface mining sites, methods of coal surface mining and the nature and extent of reclamation; consideration of the impact of coal surface mining upon the ecology and land use of surrounding areas as well as upon the disturbed land of the coal surface mining site; and the incorporation and use of control techniques and reclamation actions as an integral and simultaneous part of coal surface mining.

(c) To the extent that the federal government defines or redefines its jurisdiction over coal surface mining operations within the scope of this part, it is the intention of the general assembly that the program substantially comply with the federal definitions.

History.
Acts 1987, ch. 251, § 6.

59-8-403. Part definitions. [See contingent amendment to subdivision (2) and Compiler's Notes.]

As used in this part, unless the context otherwise requires:

(1) "Affected area" means any land or water surface area which is used to facilitate, or is physically altered by, coal surface mining and reclamation operations. The affected area includes the disturbed area; any area upon which coal surface mining and reclamation operations are conducted; any adjacent lands, the use of which is incidental to coal surface mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, coal surface mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property; material on the surface resulting from, or incident to, coal surface mining and reclamation operations; and the area located above underground workings. The affected area includes every road used for purposes of access to, or for hauling coal to or from, coal surface mining and reclamation operations, unless the road:

(A) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(B) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(C) There is substantial (more than incidental) public use;

(2) **[Current version. See second version for contingent amendment and Compiler's Notes.]** "Board" means the Tennessee board of water quality, oil, and gas [See the Compiler's Notes] as established pursuant to [former] § 59-8-321 [repealed. See the Compiler's Notes];

(2) **[Contingent amendment. See the Compiler's Notes.]** "Board" means the Tennessee "board of energy and natural resources, created by § 69-3-104;

(3) "Coal surface mining and reclamation operations" means surface mining operations and all activities necessary and incidental to the reclamation of such operations;

(4) "Coal surface mining operations" means:

(A) Activities conducted on the surface of lands in connection with a coal surface mine. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and loading of coal at or near the mine site; provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16⅔%) of the tonnage of minerals removed for purposes of commercial use or sale; and

(B) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities for haulage and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incidental to such activities;

(5) "Commissioner" means the commissioner of environment and conservation, the commissioner of environment and conservation's duly authorized representative, and in the event of absence or a vacancy in the office of commissioner, the deputy commissioner;

(6) "Director" means the director of the division of water pollution control in the department of environment and conservation;

(7) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or any other requirement of this part, in a coal surface mining and reclamation operation which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not personally expose oneself to the danger during the time necessary for abatement;

(8) "Lignite coal" means consolidated lignitic coal having less than eight thousand three hundred British thermal units (8,300 BTUs) per pound,

moisture and mineral matter free;

(9) "Operator" means any person, partnership or corporation engaged in mining coal from the earth who removes or intends to remove more than twenty-five (25) tons of coal from the earth by surface mining or who removes overburden for the purpose of removing coal within twelve (12) successive calendar months in any one (1) location;

(10) "Permit" means a permit to conduct coal surface mining and reclamation operations issued by the commissioner pursuant to this part;

(11) "Permit applicant" or "applicant" means a person applying for a permit;

(12) "Permit area" means the area of land indicated on the approved map submitted by the operator with the operator's application, which area of land shall be covered by the operator's bond as required by this part and shall be readily identifiable by appropriate markers on the site;

(13) "Permittee" means a person holding a permit;

(14) "Person" means an individual, partnership, association, society, governmental agency or entity, joint stock company, firm, company, corporation, or other business organization. The board, department, and their officials and employees acting in their official capacity are not to be considered "persons" pursuant to this part;

(15) "Reclamation plan" means a plan submitted by an applicant for a permit under this part which sets forth a plan for reclamation of the proposed coal surface mining operations pursuant to this part;

(16) "Secretary" means the secretary of the interior; and

(17) "Wildcat miner" means a person violating this part by willfully and knowingly extracting coal without a valid permit, or from an area not covered by a valid permit.

History.

Acts 1987, ch. 251, § 7; 1992, ch. 693, § 1; 2018, ch. 839, § 7.

Compiler's Notes.

Former § 59-8-321, referred to in this section, concerning the board of reclamation review, was repealed by Acts 1991, ch. 117, § 2(b). The duties of the former board of reclamation review were transferred to the former water quality control board created by § 69-3-104, by Acts 1991, ch. 117, § 4. The former water quality control board, created by § 69-3-104, was terminated by Acts 2012, ch. 986, § 26, and its responsibilities were transferred to the Tennessee board of water quality, oil, and gas, created by § 69-3-104.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking, upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment rewrote the definition of "board" by substituting "board of energy and natural resources, created by § 69-3-104" for "board of water quality, oil, and gas as established pursuant to former § 59-8-321".

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

Cross-References.

Controlling interest defined, § 59-8-406.

59-8-404. Commissioner's powers generally.

In addition to the specific powers and authority granted elsewhere in this chapter, the commissioner shall have the following authority and powers to:

(1) Administer and enforce this part and its regulations, permits and orders authorized and promulgated pursuant thereto;

(2) Conduct and obtain investigations, research, experiments, training programs and demonstrations, and to collect and disseminate information relating to exploration, surface mining, reclamation of disturbed lands, and control of pollution of water and soil affected by exploration and surface mining for coal;

(3) Promulgate regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2;

(4) Issue notices of noncompliance, cease orders, or other orders in the office or on-site, as are authorized by this part requiring the adoption by an operator of remedial measures necessary for carrying out this part or regulations, or permits, issued pursuant to this part;

(5) Examine, and approve, modify, or disapprove, applications for permits, maps, bonds, mining and reclamation plans submitted by operators;

(6) Establish by regulation standards for acceptable mining and reclamation of affected areas, which shall be designed to achieve soil stabilization, control soil erosion, obliterate the scars of the mining operation, ensure quick revegetation, and ensure that the operation meets applicable soil and water quality standards;

(7) Make such investigations or inspections as are necessary to insure compliance with this part, including the right to enter at any time upon a suspected or affected area for such purposes and the right of ingress and egress across intervening properties;

(8) Employ and commission qualified persons as surface mine personnel. When properly qualified and commissioned, such personnel shall be vested with such authority as is necessary to enforce all laws, regulations, and permits administered by the department, including the issuance of service of process, and shall have the right to carry firearms or other arms while on duty;

(9) Enter into contracts or other agreements for reclamation of sites pursuant to this chapter, or to otherwise further the purposes of this part;

(10) Expend or cause to be expended money from the surface mining reclamation fund for purposes of this chapter; and

(11) Establish a process whereby a single set of forms and information may be submitted in multiple copies to the division of water pollution control, containing sufficient mutually needed information to serve as a basic application for such agencies, so that evaluation of applications shall be made cooperatively, and decisions to grant or deny these permits shall be made simultaneously.

History.
Acts 1987, ch. 251, § 8.

59-8-405. Emergency authority.

(a) The commissioner is authorized to expend moneys from the Tennessee surface mine reclamation fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices, on eligible lands, if the commissioner finds that:

(1) An emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effect of coal mining practices.

(b)(1) The commissioner, commissioner's agents, employees, and contractors, shall have the right to enter upon any land where the emergency exists, and any other land, to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices, and to do all things necessary or expedient to protect the public health, safety, or general welfare.

(2) Such entry shall be construed as an exercise of the police power, and shall not be construed as an act of condemnation of property nor of trespass thereon.

(3) The money expended for such work and the benefits accruing to any such land shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for alleged damages by virtue of such entry; provided, however, that this subdivision (b)(3) is not intended to create new rights of action or eliminate existing immunities.

History.
Acts 1987, ch. 251, § 9.

Cross-References.
Surface mine reclamation fund, § 59-8-303.

59-8-406. Permits generally.

(a)(1) No operator shall engage in coal surface mining operations which affect two (2) acres or less without having first obtained from the commissioner a permit for the surface mining operation.

(2) All permits issued pursuant to the requirements of this part shall be issued for a term not to exceed one (1) year.

(3) Such permits shall be granted by the commissioner only if the requirements and criteria set forth in this part and any regulations pertaining to those requirements are satisfied; and only upon the submission by the operator and approval by the commissioner of a bond and permit fee for all acres permitted, a mining and reclamation plan, and other information as provided in this part and regulations issued pursuant to this part.

(4) The permit shall authorize the operator to conduct coal surface mining operations on the area described in the application and approved plan; provided, that mining, regrading, and initial seeding are completed within one (1) year of permit issuance.

(b) The issuance of permits shall be subject to the payment of the fee and the posting of the performance bond as prescribed in this part and submission of such information necessary to assure compliance with this part as prescribed by regulations of the commissioner.

(c) The issuance of a permit shall be subject to the submission of a copy of

the written determination made by the United States office of surface mining, pursuant to 30 CFR 700.11(c) that the proposed operation is exempt from the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.), as amended.

(d) Information pertaining to coal seams, test borings, core samplings or soil samples required by this section shall be made available to any person with an interest which is or may be adversely affected; provided, that information which pertains only to the analysis of the chemical and physical properties of the coal (excepting information regarding any mineral or elemental content which is potentially toxic in the environment) shall be kept confidential and not made a matter of public record.

(e) Each applicant for a coal surface mining permit shall submit to the commissioner, as part of the permit application, a reclamation plan which shall meet the requirements of this part.

(f) Each applicant for a coal surface mining permit shall file a copy of the complete application for public inspection with the registrar of deeds at the courthouse of the county, or an appropriate public office approved by the commissioner, where the mining is proposed to occur, except for that information referred to in subsection (d) as confidential. The application shall be filed for public review within five (5) days of application submittal to the commissioner.

(g)(1) Each applicant for a coal surface mining permit shall submit as part of the permit application, a certificate issued by an insurance company authorized to do business in this state, certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operation for which such permit is sought, or evidence that the applicant has satisfied other state or federal self-insurance requirements.

(2) Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface mining and reclamation operations, including the use of explosives, and entitled to compensation under the applicable state law.

(3) Such policy shall be maintained in full force and effect during the term of the permit including the length of all reclamation operations.

(h) The commissioner may by rule or regulation set criteria for obtaining a permit exemption for the following:

(1) Extraction of coal as an incidental part of a federal, state or local government financed highway or other construction; or

(2) Construction operations involving less than one (1) acre in disturbance where coal removal is incidental to the purpose of the construction and not inconsistent with the purposes of this part.

(i) An on-the-ground inspection of the proposed affected area shall be made by the commissioner before a new permit is issued.

(j)(1) The applicant shall submit the applicant's name, permanent address, and an address which will be used in connection with the operation covered by the permit and telephone number. The applicant shall also identify the operator and any subcontractors which will be used in connection with the operation and provide their names, permanent addresses, and telephone numbers.

(2) Where a corporation is identified either as an applicant, operator, or subcontractor, the applicant must also submit a certified copy of the corporate charter, a list of the board of directors and officers of the corporation and identify any person who has a controlling interest in the corporation.

(3) Where a partnership, sole proprietorship or other business enterprise is identified either as an applicant, operator, or subcontractor, the applicant shall submit the names and addresses of all partners or other persons with a controlling interest in the business venture.

(4) For purposes of this part, "controlling interest" means ownership of ten percent (10%) or more of the voting shares of, or general partnership in, an entity; any relationship which gives one (1) person the ability in fact or law to direct what the other does, or any relationship which gives one (1) person express or implied authority to determine the manner in which coal at different sites will be mined, handled, sold or disposed of.

(5) The applicant shall also identify any members of the applicant's same family and their relatives who have been issued a permit pursuant to this part.

(k) The commissioner shall require all permittees to keep such records and make such reports as the commissioner may require by rule.

(*l*) The authorized representatives of the commissioner, without advance notice or a search warrant, and upon presentation of appropriate credentials:

(1) Shall have the right of entry to, upon, or through any coal surface mining and reclamation operation or any premises in which any records required to be maintained are located; and

(2) May at reasonable times, and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under this part.

(m) A permit shall not be issued to an applicant who has been issued another permit previously, unless and until the requirements for partial bond release have been met. No person who has forfeited a bond under this part prior to meeting requirements for partial bond release shall be issued a permit. No permit shall be issued to an applicant who identifies an operator or subcontractor pursuant to subsection (j) who has forfeited a bond under this part prior to meeting requirements for partial bond release.

History.
Acts 1987, ch. 251, § 10.

Cross-References.
Confidentiality of public records, § 10-7-504.
Permit application fees, § 59-8-418.

59-8-407. Mining and reclamation plans.

(a) Each permit application shall include a mining and reclamation plan which shall contain such information as the commissioner, by regulation, requires as necessary to demonstrate that reclamation required by this part can be accomplished.

(b)(1) The mining and reclamation plan may be changed with the commis-

sioner's approval at any time upon application of the operator, to take account of changes in conditions or to correct any previous oversight. The commissioner may also order a change in the reclamation plan for the same reasons.

(2) Any revision which proposes significant alteration to the mining or reclamation plan shall be subject to the same notice and public hearing requirements as an application for a permit. The commissioner shall promulgate rules and regulations specifying what constitutes such significant alteration.

(c)(1) The plans shall be kept current and shall be carried out concurrently with the surface mining operation.

(2) Any backfilling, grading, shaping, topsoiling, and cover crop sowing, if necessary, shall be completed within ninety (90) days after completion of the removal of the coal from a particular pit, area, or acre as identified in the mining and reclamation plan.

(3) All of the site preparation and revegetative work shall be carried out within such time as permitted by the commissioner's regulations, which shall not be more than the first seeding or planting season after conclusion of the backfilling, grading and reshaping.

(4) Any waiver from the above schedule must be in writing from the commissioner.

(5) Each operator shall file a completion report within thirty (30) days after initial seeding and annually thereafter, showing those portions of the affected area for which reclamation, in accordance with the approved plan has been completed until final bond release.

(6) The commissioner shall inspect such areas and shall notify the operator whether the reclamation is accepted as being in accordance with the approved plan, or whether there are deficiencies which must be corrected.

(d) In addition to the requirements specified in subsection (a), the mining and reclamation plan submitted by the operator in connection with the operator's application for a permit shall include a detailed topographic map, prepared by a registered engineer, or a registered land surveyor, on a United States geological survey map, or aerial photograph, or equivalent, as may be approved by the commissioner, and on such scale as the commissioner shall require by regulation showing:

(1) The area of land affected, the location of the stream or streams or any standing body of water into which the area drains, the location of drainways and the planned siltation traps and other drainage controls and the location of haul or other access roads to be prepared or used by the operator in the mining operation;

(2) The location of any buildings, cemeteries, public highways, railroad tracks, gas and oil wells, publicly owned lands, officially designated scenic areas, utility lines, underground mines, transmission lines or pipe lines within the affected area or within five hundred feet (500′) thereof;

(3) The approximate location of the cuts or excavations to be made in the surface and the estimated location and height of spoil banks, and the total number of acres involved in the area of land affected; and

(4) The date the map was prepared, together with a certification as to its accuracy by the person responsible for its preparation.

(e)(1) The surface mining application will be accompanied by a detailed mining plan showing:

(A) The depth and character of overburden;

(B) The thickness of the coal being mined;

(C) Method of mining;

(D) Mine waste disposal areas;

(E) The manner, timing and distance for backfilling, grading work;

(F) Final mine waste disposal areas and final shape of stable slope; and

(G) A reclamation plan for haul roads that are to be left, which proposals shall meet the provisions of this section and all rules and regulations adopted pursuant thereto by the commissioner.

(2) The application shall assure that all reshaping will be completed within such time as permitted by the commissioner's regulations, which shall not be more than three (3) months after completion of the removal of the coal being mined.

History.
Acts 1987, ch. 251, § 11.

Cross-References.
Release of bond, § 59-8-414.

59-8-408. Bond requirements.

(a)(1) When an application is submitted, the applicant shall file with the commissioner, on a form prescribed and furnished by the commissioner, a bond payable to the state of Tennessee, in penal sum, and conditioned on the faithful performance of the provisions of the applicant's permit.

(2) The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct coal surface mining and reclamation operations.

(3) The bond shall be executed by the operator and a corporate surety who is approved by the commissioner and properly authorized to act as such surety and licensed to do business in this state; provided, however, that the operator may elect to deposit cash or negotiable certificates of deposit assigned irrevocably to the state, or negotiable United States treasury bonds or negotiable general obligation municipal or corporate bonds, which municipal or corporate bonds have the highest rating by Moody's and/or Standard and Poor's rating services, with the treasurer of this state in lieu of a corporate surety.

(4) The treasurer shall receive and hold such deposits in the name of the state of Tennessee, in trust, for the purposes for which such deposit is made, and shall at all times be responsible for the custody and safekeeping of such deposits.

(5) The operator making the deposit shall be entitled from time to time to demand and receive from the treasurer, on the written order of the commissioner, the whole or any portion of any securities so deposited, upon depositing with the treasurer, in lieu thereof, other negotiable securities of the classes herein specified having a market value at least equal to the sum of the bond, and also to demand and recover the interest income from the securities as the same becomes due and payable; provided, however, that the

treasurer, at the request of the operator, shall convert such securities into such other negotiable securities of the classes herein specified as may be designated by the operator.

(b) The amount of bond or cash deposit or marketable value of the securities shall be ten thousand dollars ($10,000). Liability under each bond shall be continuous until the reclamation provisions of this part and regulations have been fulfilled.

(c) Local governmental entities and state agencies may execute their own bonds as surety.

History.
Acts 1987, ch. 251, § 12.

59-8-409. Action on permit applications.

Upon the basis of a complete mining application and reclamation plan as required, including public notification and the opportunity for public comment and a public hearing, the commissioner shall grant, require modification of, or deny the application for a permit in not less than thirty (30) days nor more than sixty (60) days, and notify the applicant in writing. The applicant for a permit shall have the burden of establishing that the application is in compliance with all the requirements of the program.

History.
Acts 1987, ch. 251, § 13.

59-8-410. Permit approval — Required findings.

No permit application shall be approved unless the applicant affirmatively demonstrates, and the commissioner finds in writing, on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicant, that:

(1) The permit application is accurate and complete and that the applicant has complied with all the requirements of this part and any regulations issued pursuant to this part;

(2) The applicant has demonstrated that reclamation as required by this part and any regulations issued pursuant to this part can be accomplished under the reclamation plan contained in the permit application;

(3) No part of the operation would constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, reservoir, water wells, officially designated scenic areas or other private or public property;

(4) The area proposed to be mined for coal is not included within an area designated unsuitable for coal surface mining pursuant to the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. § 1201 et seq.), or is not within an area under study for such designation in an administrative proceeding commenced pursuant to such law (unless the operator demonstrates that prior to January 1, 1977, the applicant has made substantial legal and financial commitments in relation to a mining operation for which he is applying for a permit);

(5) The owner or owners of the coal to be mined are identified;

(6)(A) The source of the operator's legal right to enter and mine the coal on the land affected by the permit and whether that right is the subject of pending court litigation are identified;

(B) There is evidence of the operator's legal right to surface mine the minerals on the land affected by the permit. If the surface estate has been severed from the mineral estate, such evidence may be provided by either:

(i) A deed, lease, or other document which severs the mineral rights and expressly permits the removal of minerals by surface mining or a certified extract of the appropriate provisions of such documents; or

(ii) A deed, lease or conveyance which severs the mineral rights without specific provisions for surface mining and an accompanying affidavit by the current surface estate owner agreeing to the removal of such minerals by surface mining; and

(7) In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the commissioner:

(A) The written consent of the surface owner to the extraction of coal by surface mining methods;

(B) A conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(C) If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined by law; provided, that nothing in this part shall be construed to authorize the commissioner to adjudicate property rights disputes.

History.
Acts 1987, ch. 251, § 14.

59-8-411. Public notice and review — Appeal from commissioner's decision. [See contingent amendment to subdivision (c)(2) and the Compiler's Notes.]

(a)(1) The permit applicant shall publish an advertisement in a newspaper of general circulation in the locality of the proposed site, which describes the ownership, the exact location, and boundaries of the proposed site specifically enough that the proposed operation can be readily located by local residents, and the location of the place where the application is available for public inspection. Such advertisement shall be published at least once within thirty (30) days prior to the filing of an application with the commissioner and shall be in such form as shall be specified by regulation.

(2) The permit applicant shall notify every legal or equitable owner of record if different than the applicant of all surface areas contiguous to any part of the permit area by certified mail within thirty (30) days prior to the filing of the application of the proposed coal surface mining operation.

(3) The permit application shall contain proof of such notification.

(b) Any person may have the right to see and review the entire application, except for information for which confidentiality is provided in this part or otherwise by law, and any person having an interest which is or may be adversely affected, or the officer or head of any federal, state, or local

governmental agency or authority may file written objections to the application for a permit within thirty (30) days after the receipt of an application. Any written comments received shall be taken into consideration when the commissioner makes a determination on the application.

(c)(1) If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons therefor must be set forth in the notification.

(2) **[Current version. See second version for contingent amendment and Compiler's Notes.]** Any person with an interest which is or may be adversely affected by any decision of the commissioner in granting, denying, or modifying any permit application may appeal to the Tennessee board of water quality, oil, and gas [See the Compiler's Notes] within thirty (30) days. Such hearing shall be held within sixty (60) days of filing of such appeal and the hearing shall otherwise be conducted as provided in [former] § 59-8-321(g) [repealed. See the Compiler's Notes].

(2) **[Contingent amendment. See the Compiler's Notes.]** Any person with an interest which is or may be adversely affected by any decision of the commissioner in granting, denying, or modifying any permit application may appeal to the board within thirty (30) days. Such hearing shall be held within sixty (60) days of filing of such appeal and the hearing shall otherwise be conducted as provided in [former] § 59-8-321(g) [repealed. See the Compiler's Notes].

History.

Acts 1987, ch. 251, § 15; 2018, ch. 839, § 8.

Compiler's Notes.

Former § 59-8-321, referred to in this section, concerning the former board of reclamation review, was repealed by Acts 1991, ch. 117, § 2(b). The duties of the former board of reclamation review were transferred to the former water quality control board created by § 69-3-104, by Acts 1991, ch. 117, § 4. The former water quality control board, created by § 69-3-104, was terminated by Acts 2012, ch. 986, § 26, and its responsibilities were transferred to the Tennessee board of water quality, oil, and gas, created by § 69-3-104.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking, upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment substituted "board" for "Tennessee board of water quality, oil, and gas" in (c)(2).

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

Cross-References.

Confidentiality of public records, § 10-7-504.

59-8-412. Performance standards.

(a) Any permit issued under this part to conduct coal surface mining operations shall require the operator to meet all applicable performance standards of this part, any other environmental laws and regulations which

relate to the operation and any other requirements that the commissioner shall promulgate.

(b) Such performance standards referred to in subsection (a) include:

(1) Quick and permanent soil stabilization must be achieved by planting of grasses, legumes and trees or shrubs, or any prescribed combination thereof;

(2) Backfilling and grading must be performed timely to prevent the impoundment and contamination of water in pits;

(3) Drainage from affected areas must be controlled so as to minimize concentration of suspended solids to waters of the state;

(4) All acid producing material must be buried on the protected area; and

(5) All highwalls exposed during the mining process other than previously existing highwalls must be eliminated; provided, however, that if a prior existing highwall is disturbed, the highwall must be eliminated to the extent of the new exposure.

History.
Acts 1987, ch. 251, § 16.

59-8-413. Inspections. [See contingent amendment to subdivision (e)(5) and Compiler's Notes.]

(a) The commissioner shall cause to be made such inspections of any coal surface mining and reclamation operations as are necessary to evaluate the administration of the program or to determine whether such operation is in compliance with this part and all regulations and permits issued pursuant to this part, and for such purposes authorized representatives of the commissioner shall have a right of entry to, upon, or through any coal surface mining and reclamation operation, and/or exploratory operation.

(b) The inspections shall be conducted in such manner and frequency as prescribed in regulations promulgated by the commissioner, and no requirement for a search warrant shall be imposed. Any person conducting coal surface mining operations in this state is put on notice that such frequent unannounced warrantless searches will be conducted for the purpose of carrying out this part.

(c) Each permittee shall conspicuously maintain at the entrances to each coal surface mining and reclamation operation, a clearly visible sign which sets forth the name, business address, and telephone number of the permittee, and the permit number of the coal surface mining and reclamation operations.

(d) Each inspector, upon detection of each violation of any requirement of this part or any regulation or permit issued pursuant to this part, shall immediately inform the operator in writing and shall report in writing any such violation to the commissioner.

(e)(1) Whenever on the basis of any information available to the commissioner, including receipt of information from any person, the commissioner has reason to believe that any person is in violation of any requirement of this part, regulation issued pursuant to this part, or any permit, condition, order, or notice of noncompliance issued under this part, the commissioner shall investigate, and if the violation is confirmed, take appropriate action within ten (10) days (or immediately if proof is provided that an imminent

substantial danger exists).

(2) The identity of any person supplying information shall remain confidential if requested by such person.

(3) When an inspection results from information provided to the commissioner by any person, the commissioner shall notify such person when the inspection is proposed to be carried out, and such person shall be allowed to accompany the inspector during the inspection; provided, however, that any person so accompanying the inspector shall comply with all state and federal safety requirements.

(4) Within ten (10) days of the inspection or fifteen (15) days of the complaint if there is no inspection, the commissioner shall send a complete report to the complainant.

(5) **[Current version. See second version for contingent amendment and Compiler's Notes.]** Any person dissatisfied with the action of the commissioner may appeal to the Tennessee board of water quality, oil, and gas [See the Compiler's Notes] as provided in [former] § 59-8-321 [repealed. See the Compiler's Notes].

(5) **[Contingent amendment. See the Compiler's Notes.]** Any person dissatisfied with the action of the commissioner may appeal to the board.

History.

Acts 1987, ch. 251, § 17; 2018, ch. 839, § 9.

Compiler's Notes.

Former § 59-8-321, referred to in this section, concerning the former board of reclamation review, was repealed by Acts 1991, ch. 117, § 2(b). The duties of the former board of reclamation review were transferred to the former water quality control board created by § 69-3-104, by Acts 1991, ch. 117, § 4. The former water quality control board, created by § 69-3-104, was terminated by Acts 2012, ch. 986, § 26, and its responsibilities were transferred to the Tennessee board of water quality, oil, and gas, created by § 69-3-104.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking, upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment substituted "board" for "Tennessee board of water quality, oil, and gas as provided in former § 59-8-321" in (e)(5).

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

Cross-References.

Confidentiality of public records, § 10-7-504.

59-8-414. Release of bond. [See contingent amendment to subsection (b) and the Compiler's Notes.]

(a) The commissioner may release all or part of the bond or deposit when the commissioner is satisfied that the reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this part. Releases and partial releases shall be accomplished as follows:

(1) When the operator completes the backfilling, regrading, topsoiling, drainage control, site preparation, soil treatments, mulching, and initial

planting of the vegetative cover in accordance with the approved plan as noted on a completion report, the commissioner shall issue to the operator and the operator's surety a partial release of seventy percent (70%) of the bond. The remaining bond shall be held for one (1) year, at a minimum, to assure that all reclamation requirements have been successfully met;

(2) The permittee shall not be denied access to the mining site for the purposes of completing or maintaining reclamation work because of the expiration of the permittee's lease, until all of the permittee's performance bond has been released.

(b) **[Current version. See second version for contingent amendment and Compiler's Notes.]** If the commissioner disapproves the application for release of the bond or portion thereof, the commissioner shall notify the permittee and the permittee's surety, stating the reasons for disapproval and recommending specific corrective actions necessary to secure the release, and allowing the permittee an opportunity for a hearing before the Tennessee board of water quality, oil, and gas [See the Compiler's Notes]. This notice and recommendation shall be handed to the operator in person, or served by certified mail addressed to the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to comply with this part, or the regulations of the commissioner.

(b) **[Contingent amendment. See the Compiler's Notes.]** If the commissioner disapproves the application for release of the bond or portion thereof, the commissioner shall notify the permittee and the permittee's surety, stating the reasons for disapproval and recommending specific corrective actions necessary to secure the release, and allowing the permittee an opportunity for a hearing before the board. This notice and recommendation shall be handed to the operator in person, or served by certified mail addressed to the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to comply with this part, or the regulations of the commissioner.

History.

Acts 1987, ch. 251, § 18; 2018, ch. 839, § 10.

Compiler's Notes.

The duties of the former board of reclamation review, formerly referred to in this section, were transferred to the former water quality control board, created by § 69-3-104, by Acts 1991, ch. 117, § 4. The former water quality control board, created by § 69-3-104, was terminated by Acts 2012, ch. 986, § 26, and its responsibilities were transferred to the Tennessee board of water quality, oil, and gas, created in § 69-3-104.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking, upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment substituted "board" for "the Tennessee board of water quality, oil, and gas" in the first sentence of (b). See the Compiler's Notes.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

Cross-References.
Bond requirements, § 59-8-408.

59-8-415. Noncompliance.

(a)(1) If an operator violates the requirements of this part or regulations adopted pursuant thereto, or the terms of any permit or the terms of any order of the commissioner or the commissioner's designee, the commissioner or the designee shall issue a written notice of noncompliance to be delivered in accordance with this section to the operator, fixing a reasonable time for correction.

(2) The total time for abatement under a notice of violation, including all extensions, shall not exceed sixty (60) days from the date of issuance, in accordance with rules promulgated pursuant to this part.

(3) If, upon expiration of the period of time originally fixed or subsequently extended, the commissioner or the commissioner's designee finds that the violation has not been abated, the commissioner or the designee shall immediately order a cessation of coal surface mining and reclamation operations or the portion thereof relevant to the violation.

(4) Such cessation order shall remain in effect until the commissioner or the commissioner's designee determines that the violation has been abated, or until modified, vacated, or terminated by the commissioner or the commissioner's designee in accordance with this section.

(5) In the order of cessation, the commissioner or the commissioner's designee shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(6) If necessary, the commissioner or the commissioner's designee shall order suspension or revocation of a permit and forfeiture of the bond according to this part.

(7) The commissioner shall also issue an immediate cease order to any operator mining without a valid permit, or mining an area not covered by a valid permit.

(b)(1) If the commissioner determines that any condition or practice exists, or that the operator is in violation of any requirement of this part or any permit condition required by this part, which condition, practice, or violation also creates an imminent danger to the health and safety of the public, or is causing, or can reasonably be expected to cause, significant and imminent environmental harm to land, air, or water resources, the commissioner shall immediately order a cessation of coal surface mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation and commence bond forfeiture proceedings.

(2) Such cessation order shall remain in effect until the commissioner or the commissioner's designee determines that the condition, practice, or violation has been vacated, or terminated by the commissioner pursuant to subsection (c).

(3) Where the commissioner finds that the ordered cessation of coal surface mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health and safety of the public or

the significant and imminent environmental harm to land, air, or water resources, the commissioner shall, in addition to the cessation order, impose affirmative obligations on the operator requiring the operator to take whatever steps the commissioner deems necessary to abate the danger or harm.

(c)(1) Notices and cease orders issued pursuant to this section shall set forth with reasonable specificity the nature of the noncompliance and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the coal surface mining and reclamation operation to which the notice or cease order applies.

(2) Each notice or cease order issued under this section shall be handed promptly to the operator and/or subcontractor in person, or served by certified mail addressed to the operator and/or subcontractor's permanent address shown on the application for a permit, or where there is no permit, to the operator's last known address, by the commissioner, and all notices or cease orders shall be in writing and shall be signed by the commissioner or the commissioner's designee.

(3) If such order is not complied with or the operator refuses or fails to correct the violation, the permit may be revoked and the performance bond shall then be forfeited to the commissioner or the commissioner's designee.

(4) Any notice or cease order issued pursuant to this section may be modified, vacated, or terminated by the commissioner.

(5) If, however, the operator makes no reasonable attempt to abate the violation within the prescribed abatement period, the bond shall be forfeited in accordance with this part.

(d) Any operator who receives any notice of noncompliance or cease order from the commissioner or the commissioner's designee may request a formal review before the board as provided in [former] § 59-8-321 [repealed. See the Compiler's Notes] and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. Any request for review made pursuant to this section shall be made, in writing, within thirty (30) days from receipt of the notice or order. Failure to forward such request to the commissioner or the commissioner's designee within thirty (30) days from receipt of the notice or order shall result in a waiver of all legal rights to contest such notice or order.

(e) The court, in issuing any final order in any action brought pursuant to subsection (a), may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Tennessee Rules of Civil Procedure.

(f) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this part and the regulations issued pursuant to it, or to seek any other relief.

(g) Any person who is injured in person or property through the violation by any operator of any regulation, order, or permit issued pursuant to this part may bring an action for damages against the operator (including reasonable attorney and expert witness fees) only in the chancery court of Davidson County, or the chancery court of the county in which the coal mining operation

complained of is located. Nothing in this subsection (g) shall affect the rights established by or limits imposed under the Workers' Compensation Law, compiled in title 50, chapter 6.

History.
Acts 1987, ch. 251, § 19.

Compiler's Notes.
Former § 59-8-321, referred to in this section, concerning the former board of reclamation review, was repealed by Acts 1991, ch. 117, § 2(b). The duties of the former board of reclamation review were transferred to the former water quality control board, created by § 69-3-104, by Acts 1991, ch. 117, § 4. The former water quality control board, created by § 69-3-104, was terminated by Acts 2012, ch. 986, § 26, and its responsibilities were transferred to the Tennessee board of water quality, oil, and gas, created by § 69-3-104.

59-8-416. Permit revocation and bond forfeiture proceedings. [See contingent amendment to subdivision (f)(1) and the Compiler's Notes.]

(a) Whenever the commissioner determines that remedial action required by any notice of noncompliance or cease order is not being carried out satisfactorily, the commissioner may revoke the permit and commence bond forfeiture proceedings consistent with this section. The commissioner shall recommend such proceedings whenever the remedial action required under a cease order issued pursuant to § 59-8-415(a) is not satisfactorily completed within sixty (60) days of issuance of the cease order.

(b)(1) Permit revocation and bond forfeiture proceedings shall be commenced by issuing a notice of intent to revoke the permit and forfeit the bond.

(2) The notice shall be sent to the permittee and the permittee's surety.

(3) The permittee or the permittee's surety may request a public informal meeting with the commissioner or the commissioner's designee to review the notice of intent. Such meeting must be requested within ten (10) days of receipt of the notice or the meeting will not be held.

(4) All such meetings must be held within twenty (20) days of receipt of the request.

(c) If a person fails to timely request an informal meeting pursuant to subsection (b), the notice of intent shall become the final order of permit revocation and bond forfeiture.

(d) After conducting an informal meeting pursuant to subsection (b), the commissioner or the commissioner's designee may take any of the following actions:

(1) Issue a final order of permit revocation and bond forfeiture;

(2) Withdraw revocation and forfeiture proceedings; or

(3) Enter into an agreement with the permittee or the permittee's surety for complete reclamation, under the following conditions:

(A) No such agreement may exceed thirty (30) days for backfilling, grading, and initial seeding; and

(B) If the commissioner or the commissioner's designee determines that the agreement is not being complied with, either person may issue a final order of permit revocation and bond forfeiture.

(e) When a notice of intent to revoke the permit and forfeit the bond becomes final because of failure to appeal, or if the commissioner issues a final order to

revoke the permit and forfeit the bond, the permittee shall immediately tender or cause to be tendered the bond to the commissioner.

(f)(1) **[Current version. See second version for contingent amendment and Compiler's Notes.]** Any person, who is aggrieved by a final order of revocation and forfeiture, may appeal the decision to the Tennessee board of water quality, oil, and gas [See the Compiler's Notes] pursuant to [former] § 59-8-321(g) [repealed. See the Compiler's Notes].

(1) **[Contingent amendment. See the Compiler's Notes.]** Any person, who is aggrieved by a final order of revocation and forfeiture, may appeal the decision to the board.

(2) Such person shall make a request for appeal and tender the amount of the bond to the commissioner within thirty (30) days from service of the final order.

(3) If the bond is other than cash, the bond must be converted to cash and deposited with the commissioner.

(4) Failure to request an appeal and submit the bond amount within thirty (30) days shall result in a waiver of all rights to contest the permit revocation and bond forfeiture and any underlying violations which may have led to the revocation and forfeiture.

(g)(1) After the permit is revoked and the bond is forfeited, the commissioner may collect the bond. If judicial action is required to collect the bond, it shall be the duty of the attorney general and reporter upon request of the commissioner to take appropriate action to collect the bond.

(2) All proceeds from the bonds shall be placed in the surface mining reclamation fund established in § 59-8-303.

(h) The commissioner is authorized once the bond is tendered or otherwise collected to use the proceeds for such reclamation as is necessary, regardless of whether or not an appeal is requested or hearing is pending. If, through administrative or judicial review, it is determined that no violation occurred or that the bond should otherwise be released, the commissioner shall within thirty (30) days remit the appropriate amount to the operator, with interest, at the rate of six percent (6%) or at the prevailing department of treasury rate, whichever is greater.

History.

Acts 1987, ch. 251, § 20; 2018, ch. 839, § 11.

Compiler's Notes.

Former § 59-8-321, formerly referred to in this section, concerning the former board of reclamation review was repealed by Acts 1991, ch. 117, § 2(b). The duties of the former board of reclamation review were transferred to the former water quality control board, created by § 69-3-104, by Acts 1991, ch. 117, § 4. The former water quality control board, created by § 69-3-104, was terminated by Acts 2012, ch. 986, § 26, and its responsibilities were transferred to the Tennessee board of water quality, oil, and gas, created by § 69-3-104.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking, upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment substituted "board" for "Tennessee board of water quality, oil, and gas pursuant to former § 59-8-321(g)" in (f)(1). See the Compiler's Notes.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-417. Civil actions. [See contingent amendment to subdivision (b)(1) and the Compiler's Notes.]

(a) The commissioner may request the attorney general and reporter to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order, and venue and jurisdiction for such action shall be in the chancery or circuit court of Davidson County, or the chancery court or circuit court in whose district the surface mining operation is located, the provisions of § 20-4-101 to the contrary notwithstanding, whenever such person, operator, or agent:

(1) Violates or fails or refuses to comply with any cease order issued by the commissioner under this part;

(2) Interferes with, hinders, or delays the commissioner or the commissioner's authorized representatives in carrying out this part;

(3) Refuses to admit such authorized representatives to a coal mine;

(4) Refuses to permit inspection of a coal mine by such authorized representatives;

(5) Refuses to furnish any information or report requested by the commissioner in furtherance of this part;

(6) Refuses to permit access to, and copying of, such records as the commissioner determines are necessary in carrying out this part; or

(7) Violates or threatens to violate any of this part, or regulations promulgated pursuant to this part, or a permit issued pursuant to this part, or violates or threatens to violate any cease order or determination promulgated pursuant to this part.

(b)(1) **[Current version. See second version for contingent amendment and Compiler's Notes.]** The commissioner may bring suit for injunctive enforcement of any cease order issued by the commissioner when any cease order has become final as a result of any person's failure to appeal to the Tennessee board of water quality, oil, and gas [See the Compiler's Notes], and such person has failed to comply with the cease order.

(1) **[Contingent amendment. See the Compiler's Notes.]** The commissioner may bring suit for injunctive enforcement of any cease order issued by the commissioner when any cease order has become final as a result of any person's failure to appeal to the board, and such person has failed to comply with the cease order.

(2) In such suits, all findings of fact contained in the cease order and complaint shall be deemed to be final, and not subject to review except as to receipt of notice of the cease order, but the defendant may proffer evidence showing that the defendant has in fact complied with the commissioner's order.

(3) The cease order issued by the commissioner in such cases shall be presumed to be reasonable and valid, and it shall be presumed that the commissioner has complied with all requirements of the law.

(4) The board may likewise bring suit for enforcement of any cease order issued by it, which has become final either by the failure of any person to appeal the board's cease order or by an appellate court's decision against any person who fails to comply with such final cease order.

(5) In such suits, the board's decision shall not be subject to challenge as to matters of fact, but the violator may proffer evidence showing that the violator has in fact complied with the board's cease order.

(c) Any suit for a permanent or temporary injunction, restraining order, or any other appropriate order brought by the commissioner shall be filed and venue and jurisdiction for such action shall be in the chancery court or circuit court of Davidson County, or the chancery court or circuit court in whose district the surface mining operation is located, in which all or a part of the violation is or is about to occur, the provisions of § 20-4-101 to the contrary notwithstanding, in the name of the department by the district attorney general or by the attorney general and reporter at the direction of the commissioner or the board. Such proceedings shall not be tried by jury.

(d) Nothing in this part shall be construed so as to eliminate any additional enforcement rights or procedures which are available under any state law to the commissioner but which are not specifically enumerated herein.

History.

Acts 1987, ch. 251, § 21; 2018, ch. 839, § 12.

Compiler's Notes.

The duties of the former board of reclamation review, formerly referred to in this section, were transferred to the former water quality control board, created by § 69-3-104, by Acts 1991, ch. 117, § 4. The water quality control board, created by § 69-3-104, was terminated by Acts 2012, ch. 986, § 26, and its responsibilities were transferred to the Tennessee board of water quality, oil, and gas, created by § 69-3-104.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking, upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment substituted "board" for "Tennessee board of water quality, oil, and gas" in (b)(1). See the Compiler's Notes.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-8-418. Permit application fees.

(a) Every application for a coal surface mining permit shall be accompanied by a fee of three thousand dollars ($3,000).

(b) Local governmental entities and state agencies are exempted from permit fees.

(c) All permit fees collected pursuant to this part are credited, appropriated and allocated to the department for the administration and enforcement of this part. Any such revenue and any interest thereon which is unexpended or unobligated at the end of any fiscal year shall not revert to the general fund, but shall be carried forward in a reserve to remain available for expenditure by

the department for such administration and enforcement. Such reserve shall not be subject to allotment impoundment and shall be maintained on a no quarter basis.

History.
Acts 1987, ch. 251, § 22.

59-8-419. Coal purchases — Permit information, etc., required.

(a) It is unlawful for any dealer, broker, or other purchaser to purchase coal from an operator without first being shown such operator's valid coal surface mining permit.

(b) Each dealer, broker or other purchaser shall maintain a record on forms furnished by the commissioner of each purchase of coal, including the date of purchase, the number of tons purchased, the name of the operator, and the operator's permit number, and shall furnish such information to the commissioner at intervals of not less than sixty (60) days.

History.
Acts 1987, ch. 251, § 23.

59-8-420. Publicly owned mining operations.

Any agency, unit, or instrumentality of state, federal, or local government, including any publicly owned utility or publicly owned corporation of state, federal, or local government, which proposes to engage in mining operations which are subject to the requirements of this part, shall comply with this part; provided, however, that local governmental entities and state agencies shall not be subject to fees or bonds except as otherwise required by this part.

History.
Acts 1987, ch. 251, § 24.

59-8-421. Section 66-5-102 unaffected.

Nothing in this part shall be construed to limit or invalidate § 66-5-102.

History.
Acts 1987, ch. 251, § 25.

CHAPTER 9

[RESERVED]

CHAPTER 10

INTERSTATE MINING COMPACT

Section
59-10-101. Interstate Mining Compact.
59-10-102. Board of reclamation review to be advisory body. [Current version. See second version of section and the Compiler's Notes.]
59-10-102. Board of reclamation review to be advisory body. [Contingent amendment. See first version of section and the Compiler's Notes.]

Section
59-10-103. Commission bylaws to be filed with state officers.
59-10-104. Commissioner of environment and conservation or designee to be official representative of governor.

59-10-101. Interstate Mining Compact.

The Interstate Mining Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I.
Finding and Purposes

(a) The party states find that:

(1) Mining and the contributions thereof to the economy and well-being of every state are of basic significance;

(2) The effects of mining on the availability of land, water and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public;

(3) Measures for the reduction of the adverse effects of mining on land, water and other resources may be costly, and the devising of means to deal with them are of both public and private concern;

(4) Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated; and

(5) The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.

(b) The purposes of this compact are to:

(1) Advance the protection and restoration of land, water and other resources affected by mining;

(2) Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water and air attributable to mining;

(3) Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated;

(4) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement,

restoration or protection of such land and other resources; and

(5) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II.
Definitions

As used in this compact, the term:

(1) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but does not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction; and

(2) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

ARTICLE III.
State Programs

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

(1) The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations;

(2) The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water;

(3) The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands; and

(4) The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future.

ARTICLE IV.
Powers

In addition to any other powers conferred upon the interstate mining commission, established by Article V of this compact, such commission shall have power to:

(1) Study mining operations, processes and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change;

(2) Study the conservation, adaptation, improvement and restoration of land and related resources affected by mining;

(3) Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact;

(4) Gather and disseminate information relating to any of the matters within the purview of this compact;

(5) Cooperate with the federal government and any public or private entities having interests in any subject coming within the purview of this compact;

(6) Consult, upon the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this compact;

(7) Study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations; and

(8) Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

ARTICLE V.
The Commission

(a) There is hereby created an agency of the party states to be known as the "Interstate Mining Commission," hereinafter called the "commission." The commission shall be composed of one (1) commissioner from each party state who shall be the governor thereof. Pursuant to the laws of his party state, each governor shall have the assistance of an advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate, from among the members of the advisory body required by this paragraph, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the governor to the commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one (1) vote each on the commission. No action of the commission making a recommendation pursuant to Article IV-3, IV-7, and IV-8 or requesting, accepting or disposing of funds,

service, or other property pursuant to this paragraph, Article V(g), V(h), or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action shall be by a majority of those present and voting, provided that action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chair, a vice chair, and a treasurer. The commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and such other personnel as the commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel or other merit system of laws of any of the party states, the executive director, with the approval of the commission, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently, or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance; provided, that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this Article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor, general assembly

and advisory body required by Article V(a) of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE VI.
Advisory, Technical, and Regional Committees

The commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

ARTICLE VII.
Finance

(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the general assembly thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one half (½) in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budget of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article V(h) of this compact; provided, that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article V(h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws.

All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of account by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII.
Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any four (4) or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE IX.

Nothing in this compact shall be construed to limit, repeal or supersede any other law of any party state.

ARTICLE X.
Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state of the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History.

Acts 1973, ch. 109, § 1; T.C.A. (orig. ed.), § 58-1801.

Compiler's Notes.

The Interstate Mining Compact, created by this section, terminates June 30, 2024. See §§ 4-29-112, 4-29-245.

For transfer of the division of surface mining and reclamation and its functions under parts 2 and 3 of this chapter and ch. 10 of this title, from the department of conservation (now environment and conservation) to the department of health and environment (now health), see Executive Order No. 40 (February 11, 1983).

For transfer of the bureau of environment in the department of health and its related functions and the administration of the Tennessee

environmental statutes (excluding title 68, chs. 14, 110 and 112) from the department of health to the department of environment and conservation, see Executive Order No. 42 (February 4, 1991).

Cross-References.

Reporting requirement satisfied by notice to general assembly members of publication of report, § 3-1-114.

Tennessee coal surface mining law, title 59, ch. 8, part 3.

59-10-102. Board of reclamation review to be advisory body. [Current version. See second version of section and the Compiler's Notes.]

The Tennessee board of water quality, oil, and gas [See the Compiler's Notes], established by [former] § 59-8-321 [repealed. See the Compiler's Notes], the "Tennessee Surface Mining Law," shall be the advisory body referred to in Article V(a) of the Interstate Mining Compact. Any duties of any member of the board relating to the compact are official duties of the board within the meaning of [former] § 59-8-321 [repealed. See the Compiler's Notes].

History.

Acts 1973, ch. 109, § 2; T.C.A., § 58-1802.

Compiler's Notes.

Former § 59-8-321, referred to in this section, concerning the former board of reclamation review, was repealed by Acts 1991, ch. 117, § 2(b). The duties of the former board of reclamation review were transferred to the former water quality control board, created by § 69-3-104, by Acts 1991, ch. 117, § 4. The water quality control board, created by § 69-3-104, was terminated by Acts 2012, ch. 986, § 26, and its responsibilities were transferred to the Tennessee board of water quality, oil, and gas, created by § 69-3-104.

59-10-102. Board of reclamation review to be advisory body. [Contingent amendment. See first version of section and the Compiler's Notes.]

The Tennessee board of energy and natural resources, created by § 69-3-104, the "Tennessee Surface Mining Law," shall be the advisory body referred to in Article V(a) of the Interstate Mining Compact. Any duties of any member of the board relating to the compact are official duties of the board within the meaning of [former] § 59-8-321 [repealed. See the Compiler's Notes].

History.

Acts 1973, ch. 109, § 2; T.C.A., § 58-1802; Acts 2018, ch. 839, § 13.

Compiler's Notes.

Former § 59-8-321, referred to in this section, concerning the former board of reclamation review, was repealed by Acts 1991, ch. 117, § 2(b). The duties of the former board of reclamation review were transferred to the former water quality control board, created by § 69-3-104, by Acts 1991, ch. 117, § 4. The water quality control board, created by § 69-3-104, was terminated by Acts 2012, ch. 986, § 26, and its responsibilities were transferred to the Tennessee board of water quality, oil, and gas, created by § 69-3-104.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking,

upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment substituted "The Tennessee board of energy and natural resources, created by § 69-3-104," for "The Tennessee board of water quality, oil, and gas, established by § 59-8-321," at the beginning of the section. See the Compiler's Notes.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

59-10-103. Commission bylaws to be filed with state officers.

In accordance with Article V(i) of the compact, the commission shall file copies of its bylaws and any amendments thereto with the governor, secretary of state, and commissioner of environment and conservation.

History.

Acts 1973, ch. 109, § 3; T.C.A., § 58-1803.

59-10-104. Commissioner of environment and conservation or designee to be official representative of governor.

The commissioner of environment and conservation, or the commissioner's designee, shall be the official representative of the governor in the event the governor is unable to attend any meeting of the interstate mining commission or to perform any other function in connection with the business of such commission.

History.

Acts 1982, ch. 557, § 3.

CHAPTER 11

WEIGHING OF COAL AND MINERALS

Section

59-11-101. Checkweigher or checkmeasurer — Duties — Interference prohibited — Penalty.
59-11-102. Recordkeeping — Disputes — Settlement.
59-11-103. Improper weighing or measuring — Penalty.
59-11-104. Payment of checkweigher.
59-11-105. Failure to withhold wages — Liability — Penalty.

59-11-101. Checkweigher or checkmeasurer — Duties — Interference prohibited — Penalty.

(a) At every coal or other mine in this state, where coal or other minerals are mined by weight or measure, the miners, or a majority of those present at a meeting called for that purpose, shall have the right to employ a competent person as checkweigher or checkmeasurer, as the case may require, who shall be permitted at all times to be present at the weighing or measuring of coal, and who shall have power to weigh or measure the same, and, during the regular working hours, have the privilege to balance and examine the scales or measure the cars; provided, that all such balancing and examination of scales shall only be done in such way and in such time as in no way to interfere with the regular working of the mines; and such person shall not be considered a trespasser during working hours while attending to the interest of such

person's employers, and in no manner shall such person be interfered with or intimidated by any person, agent, or owner, or miner.

(b) Any person violating this section is guilty of a Class C misdemeanor.

History.

Acts 1887, ch. 206, § 1; Shan., § 339; Code 1932, § 5639; T.C.A. (orig. ed.), § 58-1601; Acts 1989, ch. 591, § 113.

Cross-References.

Penalty for Class C misdemeanor, § 40-35-111.

Textbooks.

Tennessee Jurisprudence, 18 Tenn. Juris., Mines and Minerals, § 4.

NOTES TO DECISIONS

Analysis

1. Election of Checkweigher.
2. Mineworkers Waiving the Statute.
3. Intimidation or Interference.
4. Liability of Checkweigher.

1. Election of Checkweigher.

A checkweigher may be elected by a viva voce vote of the miners present, and the person receiving the affirmative vote of all those voting, though a majority of the miners present are silent, and thereby acquiescing, is duly elected and employed as their checkweigher. Murray v. La Follette C. & I. R. Co., 3 Tenn. Civ. App. (3 Higgins) 35 (1912).

2. Mineworkers Waiving the Statute.

Where contract between mine operators and union provided that mineworkers had a right to choose a checkweigher according to the terms of this section but further provided that in the event that a suitable person to act as a checkweigher was not available among the mineworkers a person not employed at the mines might be selected upon mutual agreement, the mineworkers waived the terms of the statute with reference to persons in the latter classification and as such waiver was not in contravention of public policy it was binding and effective. Black Diamond Coal Mining Co. v. Rankin, 170 Tenn. 651, 98 S.W.2d 311, 1936 Tenn. LEXIS 45 (1936).

3. Intimidation or Interference.

It is no interference with or intimidation of a checkweigher for the mine owner to threaten to close down a mine should the miners not discharge their checkweigher, because the interference with or intimidation of the checkweigher must affect the checkweigher in the discharge of the duties of the position, in order to be a violation of the statute. State v. Jenkins, 90 Tenn. 580, 18 S.W. 249, 1891 Tenn. LEXIS 46 (1891).

A company that maliciously induced miners to discharge their checkweigher before the termination of the employment period was liable in damages to the checkweigher for wrongful interference with contractual relations. Murray v. La Follette C. & I. R. Co., 3 Tenn. Civ. App. (3 Higgins) 35 (1912).

4. Liability of Checkweigher.

A checkweigher employed by the mine owner is subject to the penalty for knowingly and willfully weighing incorrectly as against the miners, especially where the miners do not all expressly agree to the incorrect method of weights. Smith v. State, 90 Tenn. 575, 18 S.W. 248, 1891 Tenn. LEXIS 45 (1891).

59-11-102. Recordkeeping — Disputes — Settlement.

It shall be a further duty of such checkweigher or checkmeasurer to credit each miner with all merchantable coal or other mineral mined by the miner, on a proper sheet or book kept by such person for that purpose. When differences arise between the checkweigher or checkmeasurer and the agent or owners of the mine, as to the uniformity, capacity of scales or cars used, the same shall be referred to the mine inspector of the district where the mine is located, whose duty it shall be to regulate the same at once; and, in the event of such scales or cars proving to be correct, then the party or parties applying for the testing thereof shall pay all costs and expenses thereof; but, if not correct, then the owner or owners of the mine to pay the cost and charges of making the examination.

History.
Acts 1887, ch. 206, § 2; Shan., § 340; Code 1932, § 5640; T.C.A. (orig. ed.), § 58-1602.

59-11-103. Improper weighing or measuring — Penalty.

Any weigher, agent, or checkmeasurer, whether employed by operators or miners, who knowingly or willfully adopts or takes more or less pounds for a bushel or ton than is provided by law, or willfully neglects the balancing or examining of the scales or cars, or knowingly and willfully weighs coal with an incorrect scale, is guilty of a Class C misdemeanor.

History.
Acts 1887, ch. 206, § 3; Shan., § 341; Code 1932, § 5641; T.C.A. (orig. ed.), § 58-1603; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

59-11-104. Payment of checkweigher.

When miners of coal or other minerals in this state elect a checkweigher or measurer, as provided, the operators, company, or firm employing the miners shall, upon receiving notice in writing from the miners of the election of checkweigher, withhold from each miner an equal amount, agreed upon by the miners and checkweigher, and pay the same to the checkweigher at each regular payday.

History.
Acts 1899, ch. 338, § 1; Shan., § 341a1; Code 1932, § 5642; T.C.A. (orig. ed.), § 58-1604.

59-11-105. Failure to withhold wages — Liability — Penalty.

Upon failure of any operator, company or firm to comply with § 59-11-104, the operator, company or firm is liable to the checkweigher for the full amount of the checkweigher's wages, and is guilty of a Class C misdemeanor.

History.
Acts 1899, ch. 338, § 2; Shan., § 341a2; Code 1932, § 5643; T.C.A. (orig. ed.), § 58-1605; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

CHAPTER 12

MINE RESCUE OPERATIONS

Section
59-12-101. Mine rescue corps created — Appointment of members.
59-12-102. Organization of corps — Qualifications — Official drills — Substitute corps members.
59-12-103. Members employees of department of labor and workforce development — Compensation — Use of volunteers.
59-12-104. Commissioner's authority during mine emergency.
59-12-105. Expenses of rescue work.
59-12-106. Training and educational programs.
59-12-107. Appropriation.
59-12-108. Rules and regulations.

59-12-101. Mine rescue corps created — Appointment of members.

There is created within the department of labor and workforce development the mine rescue corps. The commissioner of labor and workforce development, or the commissioner's designated representative, is authorized and directed to conduct studies from time to time in order to determine manpower requirements and procedures required to satisfy regulations published by the mine safety and health administration of the United States department of labor, pursuant to the Coal Mine Health and Safety Act of 1977. Based upon such studies the commissioner shall appoint qualified members to the mine rescue corps.

History.

Acts 1979, ch. 368, § 1; T.C.A., § 58-1701; Acts 1999, ch. 520, § 43.

Compiler's Notes.

The former chapter (Acts 1913 (1st E.S.), ch. 38, §§ 1-7; Shan., §§ 3079a167-3079a185; Code 1932, §§ 5658-5676; Acts 1953, ch. 86, §§ 75-93 (Williams, §§ 5638.75-5638.93, 5658-5676); modified; Acts 1955, ch. 238, § 9; 1972, ch. 459, §§ 1, 2), concerning rescue stations, was repealed by Acts 1979, ch. 368, § 9 and the present material substituted therefor.

The reference to the Coal Mine Health and Safety Act of 1977 presumably is to the Federal Coal Mine Safety and Health Act of 1969 as amended in 1977 (now Federal Mine Safety and Health Act of 1977), which appears as 30 U.S.C. §§ 801 — 804, 812 — 825, 842, 861, 878, 902, 921 — 924, 931 — 934, 936, 940, 951-959. The Federal Mine Safety and Health Act of 1977 was further amended in 1978, see 30 U.S.C. §§ 804, 938.

Cross-References.

For federal mine safety and health laws, see 30 U.S.C. § 801 et seq.

59-12-102. Organization of corps — Qualifications — Official drills — Substitute corps members.

(a) Notwithstanding any other provisions or regulations to the contrary, the members of the corps shall be grouped in teams of eight (8) members each.

(b) The commissioner or the commissioner's designated representative shall appoint one (1) individual from each team to serve as captain.

(c) The teams shall be geographically located so that every underground mine in the state can be reached in two (2) hours by a team.

(d) In order to qualify for membership in the corps, each individual shall hold a certificate in mine rescue from the mine safety and health administration.

(e) Each team must maintain official drill, at least once each month, under such regulations as may be prescribed by the commissioner or the commissioner's designated representative.

(f) For every person or entity authorized by law to operate an underground mining operation in this state, the department of labor and workforce development shall designate one (1) or more persons (as needed to ensure conformity with the Federal Mine Safety and Health Act of 1977 and the regulations promulgated thereunder) from each such underground mining operation to receive the official training described in subsection (e) and be available for emergency service as described in this chapter. Such persons shall be considered "substitute corps members" within the meaning of § 59-12-103, and shall be entitled to the compensation authorized in that section. The commissioner has the power to enter contracts with the operator of the mining operation to compensate the operator for any temporary loss of the services of substitute corps members.

History.
Acts 1979, ch. 368, §§ 1, 2; T.C.A., § 58-1702; Acts 1985, ch. 288, §§ 39, 40; 1996, ch. 751, § 1; 1999, ch. 520, § 43.

Compiler's Notes.
The former chapter (Acts 1913 (1st E.S.), ch. 38, §§ 1-7; Shan., §§ 3079a167-3079a185; Code 1932, §§ 5658-5676; Acts 1953, ch. 86, §§ 75-93 (Williams, §§ 5638.75-5638.93, 5658-5676); modified; Acts 1955, ch. 238, § 9; 1972, ch. 459, §§ 1, 2), concerning rescue stations, was repealed by Acts 1979, ch. 368, § 9 and the present material substituted therefor.

The Federal Mine Safety and Health Act of 1977, referred to in this section, is compiled in 30 U.S.C. § 801 et seq.

59-12-103. Members employees of department of labor and workforce development — Compensation — Use of volunteers.

All regular corps members and substitute corps members are employees of the department of labor and workforce development while engaged in any rescue operation pursuant to orders of the commissioner or the commissioner's designee, or while engaged in any official drill required by this chapter. All members and substitute members of the corps shall be compensated at the average hourly wage for highly skilled miners in this state while engaged in official drill and at a wage which is thirty-five percent (35%) higher than such average hourly wage when engaged in rescue work. Subject to the availability of funds, such members further may be reimbursed for mileage expenses incurred for attendance at official drills, in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. In time of a mining disaster, the commissioner or the commissioner's designee is authorized to accept the assistance of any competent persons who offer their services for rescue work. Those accepted for rescue work shall be considered regular corps members while so assisting and shall be paid at the same rate as such members until they are discharged from their services.

History.
Acts 1979, ch. 368, § 3; T.C.A., § 58-1703; Acts 1985, ch. 288, §§ 41, 42; 1999, ch. 520, § 43.

Compiler's Notes.
The former chapter (Acts 1913 (1st E.S.), ch. 38, §§ 1-7; Shan., §§ 3079a167-3079a185; Code 1932, §§ 5658-5676; Acts 1953, ch. 86, §§ 75-93 (Williams, §§ 5638.75-5638.93, 5658-5676); modified; Acts 1955, ch. 238, § 9; 1972, ch. 459, §§ 1, 2), concerning rescue stations, was repealed by Acts 1979, ch. 368, § 9 and the present material substituted therefor.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

59-12-104. Commissioner's authority during mine emergency.

The commissioner or the commissioner's designated representative shall have the authority, in the case of any mine disaster or emergency, to order any of the members of the corps to report in the shortest possible time to any point in the state with their equipment ready for duty. The commissioner or the commissioner's designated representative shall have full control of the mine and all rescue work in case of such disaster.

History.
Acts 1979, ch. 368, § 4; T.C.A., § 58-1704.

Compiler's Notes.
The former chapter (Acts 1913 (1st E.S.), ch. 38, §§ 1-7; Shan., §§ 3079a167-3079a185; Code 1932, §§ 5658-5676; Acts 1953, ch. 86, §§ 75-93 (Williams, §§ 5638.75-5638.93, 5658-5676); modified; Acts 1955, ch. 238, § 9; 1972, ch. 459, §§ 1, 2), concerning rescue stations, was repealed by Acts 1979, ch. 368, § 9 and the present material substituted therefor.

59-12-105. Expenses of rescue work.

The commissioner or the commissioner's designated representative shall be authorized to incur such expenses as the commissioner or the commissioner's designated representative may deem necessary in connection with the rescue work at any mine disaster. Verified itemized statements of time and expense shall be submitted by the parties incurring such expenses; and, after approval by the commissioner or the commissioner's designated representative, such expenses shall be paid by the state treasurer on warrant of the commissioner of finance and administration out of any appropriation authorized by this title.

History.
Acts 1979, ch. 368, § 5; T.C.A., § 58-1705.

Compiler's Notes.
The former chapter (Acts 1913 (1st E.S.), ch. 38, §§ 1-7; Shan., §§ 3079a167-3079a185; Code 1932, §§ 5658-5676; Acts 1953, ch. 86, §§ 75-93 (Williams, §§ 5638.75-5638.93, 5658-5676); modified; Acts 1955, ch. 238, § 9; 1972, ch. 459, §§ 1, 2), concerning rescue stations, was repealed by Acts 1979, ch. 368, § 9 and the present material substituted therefor.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

59-12-106. Training and educational programs.

The department of labor and workforce development is authorized and directed to organize and conduct training and educational programs for the mining industry in Tennessee which will comply with rules and regulations promulgated by the mine safety and health administration of the United States department of labor for such training and education. These programs are to be conducted within the budgetary limitations of §§ 59-1-104 and 59-12-107, together with any federal grants, matching funds, or other departmental revenue which may become available from time to time.

History.
Acts 1979, ch. 368, § 8; T.C.A., § 58-1706; 1999, ch. 520, § 43.

Compiler's Notes.
The former chapter (Acts 1913 (1st E.S.), ch. 38, §§ 1-7; Shan., §§ 3079a167-3079a185; Code 1932, §§ 5658-5676; Acts 1953, ch. 86, §§ 75-93 (Williams, §§ 5638.75-5638.93, 5658-5676); modified; Acts 1955, ch. 238, § 9; 1972, ch. 459, §§ 1, 2), concerning rescue stations, was repealed by Acts 1979, ch. 368, § 9 and the present material substituted therefor.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

For federal mine safety and health laws, see 30 U.S.C. § 801 et seq.

59-12-107. Appropriation.

There shall be appropriated and set aside for the purpose of meeting expenses provided by this chapter the revenues produced by § 59-1-104.

History.
Acts 1979, ch. 368, § 6; T.C.A., § 58-1707.

Compiler's Notes.
The former chapter (Acts 1913 (1st E.S.), ch.

38, §§ 1-7; Shan., §§ 3079a167-3079a185; Code 1932, §§ 5658-5676; Acts 1953, ch. 86, §§ 75-93 (Williams, §§ 5638.75-5638.93, 5658-5676); modified; Acts 1955, ch. 238, § 9; 1972, ch. 459, §§ 1, 2), concerning rescue stations, was repealed by Acts 1979, ch. 368, § 9 and the present material substituted therefor.

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

59-12-108. Rules and regulations.

The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of chapter 4 of this title and this part. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 1992, ch. 574, § 9.

CHAPTER 13

COAL COOPERATIVE MARKETING ASSOCIATIONS

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59-13-101. Short title.

This chapter shall be known and may be cited as the "Tennessee Coal Cooperative Marketing Association Law of 1984."

History.
Acts 1984, ch. 864, § 1.

59-13-102. Legislative intent.

In order to promote, foster and encourage the intelligent and orderly marketing of Tennessee coal through cooperation; and to eliminate speculation and waste; and to make the distribution of coal between producer and consumer as direct as can be efficiently done; and to stabilize the marketing of coal and coal products; and to provide for the organization and incorporation of cooperative marketing associations for the marketing of such products, this chapter is enacted.

History.
Acts 1984, ch. 864, § 2.

59-13-103. Chapter definitions.

As used in this chapter, the following definitions shall have the meanings set out unless the context clearly indicates otherwise:

(1) "Association" means any corporation organized under this chapter. Associations organized hereunder shall be deemed "nonprofit," inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers;

(2) "Coal" means coal and all of its derivatives;

(3) "Member" means actual members of associations without capital stock, and holders of common stock in associations organized with capital stock; and

(4) "Person" means any individual, firm, partnership, corporation, and association.

History.
Acts 1984, ch. 864, § 3.

59-13-104. Creation of associations.

Seven (7) or more persons, a majority of whom are residents of this state, engaged in the production of coal, may form a nonprofit, cooperative association, with or without capital stock, under this chapter.

History.
Acts 1984, ch. 864, § 4.

59-13-105. Purposes.

An association may be organized to engage in any activity in connection with the marketing or selling of the coal of its members or with the sampling, storing, processing, permitting, reclamation, or transporting of the coal or its derivatives; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; or in the financing of the above enumerated activities; or in any one (1) or more of the activities specified in this chapter.

History.
Acts 1984, ch. 864, § 5.

59-13-106. Communications regarding probable success.

Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the department of environment and conservation, office of energy programs, which will inform them, among other things, of the probable success of the association regardless of whatever the survey of the marketing conditions affecting the commodities proposed to be handled may indicate.

History.
Acts 1984, ch. 864, § 6; 2016, ch. 743, § 16.

59-13-107. Powers and duties.

Each association incorporated under this chapter shall have the following powers, to:

(1) Engage in activity in connection with the marketing or selling of the coal of its members or the sampling, storing, processing, permitting, reclamation, transporting of the coal or marketing of the derivatives thereof; or in any activity in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment; or in the financing of any such activities; or in any one (1) or more of the activities specified in this section; and such association may also buy, sell and deal in coal of nonmembers to any amount not greater in value than such as is handled by it for its members;

(2) Borrow money and to make advance payments and advances to members;

(3) Act as the agent or representative of any member or members in any of the above-mentioned activities;

(4) Purchase or otherwise acquire, and to hold, own, and exercise all rights or ownership in, and to sell, transfer, or pledge, or guarantee the payment of dividends or interest on or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the storing or handling or marketing of any of the products handled by the association;

(5) Establish reserves and to invest the funds thereof in bonds or in such other property as may be provided in the bylaws;

(6) Buy, hold, and exercise all privileges or ownership over such real or personal property as may be necessary or convenient or incidental for the conduct and operation of any business of the association, or incidental thereto;

(7) Establish, secure, own and develop patents, trademarks and copyrights; and

(8) Do each and every thing necessary, suitable or proper for the accomplishment of any one (1) of the purposes or the attainment of any one (1) or more of the subjects enumerated; or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this chapter, and to do any such thing anywhere.

History.
Acts 1984, ch. 864, § 7.

59-13-108. Membership — Stock.

(a) Under the terms and conditions prescribed in the bylaws adopted by it, an association may admit as members (or issue common stock to) only persons engaged in the production of coal or its derivatives to be handled by or through the association.

(b) If a member of a nonstock association be other than a natural person, such members may be represented by any individual, associate, officer, or manager, or member of such association duly authorized in writing.

(c) One (1) association organized hereunder may become a member or stockholder of any other association or associations organized hereunder.

History.
Acts 1984, ch. 864, § 8.

59-13-109. Articles of incorporation — Directors — Stock.

Each association formed under this chapter must prepare and file articles of incorporation, setting forth:

(1) The name of the association;

(2) The purpose for which it is formed;

(3) The place where its principal business will be transacted;

(4) The duration of the association, if other than perpetual. If the charter of any association organized under this chapter provides for a term of existence, not exceeding fifty (50) years, such charter is hereby deemed to be amended to provide that the duration of the association is perpetual, unless a majority of the members of such association shall vote to limit the duration of the association to some other period of time in accordance with title 48, chapter 11, part 3 or title 48, chapter 51, part 3, as applicable; provided, however, that in no event may the members so amend the charter of an association which has been in existence for more than fifty (50) years;

(5) The number of directors of the association, which must be not less than three (3) and may be any number greater than the required minimum; the term of office of such directors; and the names and addresses of those who are to serve as incorporating directors for the first term, or until the election and qualification of their successors;

(6) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and provision for the admission of new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision or paragraph of the articles of incorporation shall not be altered, amended, or repealed, except by the written consent or vote of three fourths (¾) of the members; and

(7) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value of such stock.

History.
Acts 1984, ch. 864, § 9.

Cross-References.
Preferred stock, § 59-13-126.

59-13-110. Stock — Common and preferred.

The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted; and the nature and definite extent of the preference and privileges granted to each.

History.
Acts 1984, ch. 864, § 10.

Cross-References.
Conditions for issuing stock, § 59-13-123.
Preferred stock, § 59-13-126.
Purchase of common stock by association, § 59-13-128.
Use of preferred stock to discharge obligations, § 59-13-133.

59-13-111. Articles of incorporation — Subscription and acknowledgment — Copies — Evidence.

The articles must be subscribed by the incorporators and acknowledged; and when filed, such articles of incorporation or certified copies of such articles shall be received in all the courts of this state and other places as prima facie evidence of the due incorporation of such association.

History.
Acts 1984, ch. 864, § 11.

59-13-112. Amendment of articles.

(a) An amendment must first be approved by two thirds (⅔) of the directors and then adopted by a vote representing a majority of all the members of the association.

(b) However, if at a meeting of the members of the association to which a

proposed amendment has been submitted, a majority of the members are not present, then those present and also members voting by proxy may adjourn the meeting to a time and place certain, but not sooner than three (3) weeks from the time of adjournment. Prior to the convening of the adjourned meeting, notices shall be placed in a newspaper of general circulation in the place where the principal office of the association is located each week for three (3) weeks. Such notices shall state the time, place, and purpose of the adjourned meeting. When the meeting reconvenes, the members present in person or by proxy shall constitute the quorum, and may take action on the proposed amendment by a majority vote of those represented, even if fewer than a majority of the total membership of the association.

History.
Acts 1984, ch. 864, § 12.

59-13-113. Bylaws.

Each association incorporated under this chapter must, within thirty (30) days after its incorporation, adopt for its government and management, a code of bylaws, not inconsistent with the powers granted by this chapter. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such bylaws. Each association, under its bylaws, may provide for any or all of the following matters:

(1) The number of stockholders or members constituting a quorum;

(2) The right of members or stockholders to vote by proxy or by mail or both; and the conditions, manner, form, and effects of such votes;

(3) The number of directors constituting a quorum;

(4) The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof;

(5) Penalties for violations of the bylaws;

(6) The amount of entrance, organization, and membership fees, if any; the manner and method of collection of the same; and the purposes for which they may be used;

(7) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to the member or stockholder and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign; and

(8) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and of the shares of common stock; the conditions upon which and the time when membership of any member shall cease; the automatic suspension of the rights of a member when the member ceases to be eligible to membership in the association; and

the mode, manner, and effect of the expulsion of a member; the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of membership, or, at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise the member's property interests in the association and shall fix the amount thereof in money, which shall be paid to the member within one (1) year after such expulsion or withdrawal.

History.
Acts 1984, ch. 864, § 13.

59-13-114. Meetings.

In its bylaws, each association shall provide for one (1) or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time; and ten percent (10%) of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time, and if such a special meeting is appropriately demanded, then such a meeting must be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten (10) days prior to the meeting; provided, however, that the bylaws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association.

History.
Acts 1984, ch. 864, § 14.

59-13-115. Board of directors.

The affairs of the association shall be managed by a board of not fewer than three (3) directors, elected by the members or stockholders not from their own number. The bylaws may provide that one (1) or more directors may be appointed by any public official or commission or by the other directors selected by the members or their delegates. The directors so appointed cannot be members or stockholders of the association.

History.
Acts 1984, ch. 864, § 15.

59-13-116. Compensation of officers and directors.

An association may provide a fair remuneration for the time actually spent by its officers and directors in its service and for the service of the members of its executive committee.

History.
Acts 1984, ch. 864, § 16.

59-13-117. Contracts and positions of directors — Prohibitions.

No director, during the term of the director's office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or others, or differing from terms generally current in that district. The bylaws may provide that no director shall occupy any position in the association, except the president and secretary on regular salary or substantially full-time pay.

History.
Acts 1984, ch. 864, § 17.

59-13-118. Executive committee.

The bylaws may provide for an executive committee and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

History.
Acts 1984, ch. 864, § 18.

59-13-119. Vacancies on board.

When a vacancy on the board of directors occurs, a majority vote of the executive committee shall fill the vacancy. A director elected to fill a vacancy shall be elected for the predecessor's unexpired term in office. Any directorship to be filled by reason of an increase in the number of directors may be filled for such reason by such board of directors for a term of office continuing only until the next regular election of directors.

History.
Acts 1984, ch. 864, § 19.

59-13-120. Election of officers.

The directors shall elect from their number a president and may elect one (1) or more vice presidents. They shall also elect a secretary and a treasurer; and they may combine the two (2) latter offices and designate the combined office as secretary-treasurer; or unite both functions and titles in one (1) person. The treasurer may be a bank or any depository, and as such, shall not be considered as an officer, but as a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as and where authorized by the board of directors.

History.
Acts 1984, ch. 864, § 20.

59-13-121. Surety bonds.

Every officer, employee, and agent handling funds or negotiable instruments or property of or for any association created hereunder shall be required to

execute and deliver adequate bond for the faithful performance of duties and obligations.

History.
Acts 1984, ch. 864, § 21.

59-13-122. Certificates of membership.

When a member of an association established without capital stock has paid the membership fee in full, the member shall receive a certificate of membership.

History.
Acts 1984, ch. 864, § 22.

59-13-123. Conditions of issuing stock.

No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the member's right to vote.

History.
Acts 1984, ch. 864, § 23.

Cross-References.
Purchase of common stock by association, § 59-13-128.

59-13-124. Liability of members.

No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on the membership fee or the subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

History.
Acts 1984, ch. 864, § 24.

59-13-125. Number of votes of members or stockholders.

No member or stockholder shall be entitled to more than one (1) vote, regardless of the number of shares of common stock owned by the member or stockholder.

History.
Acts 1984, ch. 864, § 25.

59-13-126. Preferred stock.

Any association organized with stock under this chapter may issue preferred stock, with or without the right to vote. Such stock may be sold to any person, member or nonmember, and may be redeemable or retireable by the associa-

tion on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate.

History.
Acts 1984, ch. 864, § 26.

Cross-References.
Division of capital stock into preferred and common stock, § 59-13-110.

59-13-127. Prohibited transfer of common stock.

The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of coal or coal products handled by the association; and such restrictions must be printed upon every certificate of stock subject thereof.

History.
Acts 1984, ch. 864, § 27.

59-13-128. Purchase of common stock by association.

The association may, at any time, as specified in the bylaws, except when the debts of the association exceed fifty percent (50%) of the association's assets, buy in or purchase its common stock at book value, as conclusively determined by the board of directors, and pay for it in cash within one (1) year thereafter.

History.
Acts 1984, ch. 864, § 28.

Cross-References.
Conditions for issuing stock, § 59-13-123.

59-13-129. Removal of officers or directors.

Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by a majority of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of two thirds (⅔) of the members, the association may remove the officer or director. The director or officer, against whom such charges have been brought, shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against the director or officer shall have the same opportunity.

History.
Acts 1984, ch. 864, § 29.

59-13-130. Referral of policy to membership.

Upon demand of two thirds (⅔) of the entire board of directors, made immediately and so recorded at the same meeting at which the original motion was passed, any matter of policy that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at

the next special or regular meeting; and a special meeting may be called for the purpose.

History.
Acts 1984, ch. 864, § 30.

59-13-131. Marketing contracts — Sales to or through associations.

The association through its board of directors may bid for and execute marketing contracts subject to a majority vote of its members requiring the members to sell, for any period of time, not over ten (10) years, all or any specified part of their coal exclusively to or through the association, or any facilities to be created by the association. If they contract a sale to the association, it shall be conclusively held that title to the products passes absolutely and unreservedly, except for recorded and statutory liens, to the association upon delivery. The contract may provide, among other things, that the association may sell or resell the products delivered by its members, with or without taking title to such product; and pay over to its members the resale price, after deducting all necessary selling, overhead, and other costs and expenses, including interest or dividends on stock, not exceeding eight percent (8%) per annum, and reserves for retiring the stock, if any; and other proper reserves; and/or any other deductions.

History.
Acts 1984, ch. 864, § 31.

59-13-132. Breach of contract — Payment of damages and costs — Injunctions.

(a) The bylaws or the marketing contract may fix, as liquidated damages, specific sums to be paid by the members or stockholders to the association upon the breach by such members or stockholders of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that such members or stockholders will pay all costs, premiums for bonds, expenses, and fees, in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties.

(b) In the event of any such breach or threatened breach of such marketing contract by a member or stockholder, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member or stockholder.

History.
Acts 1984, ch. 864, § 32.

59-13-133. Use of preferred stock to discharge obligations.

Whenever an association, organized pursuant to this chapter with preferred capital stock, shall purchase the stock or any property, or any interest in any property of any person, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest, shares of its preferred capital stock to an amount which at par value would equal the fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

History.
Acts 1984, ch. 864, § 33.

59-13-134. Reports.

Each association formed under this chapter shall prepare an annual report on forms to be furnished by the secretary of state, containing the name of the association, its principal place of business, a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders if a stock association or the number of members and the amount of membership fees received, if a nonstock association, the total expenses of operations, the amount of its indebtedness or liabilities, and its balance sheets.

History.
Acts 1984, ch. 864, § 34.

59-13-135. Interests in other corporations.

An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations with or without capital stock, and engaged in sampling, storing, processing, permitting, reclamation, transporting, marketing, or selling of the coal or the derivatives thereof handled by the association.

History.
Acts 1984, ch. 864, § 37.

59-13-136. Interests in warehousing corporations.

If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association against the commodities delivered by it, or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented. In case such warehouse is licensed or licensed and bonded under the laws of this or any other state or the United States, its warehouse receipt delivered to the association on commodities of the association or its members, or delivered by the association or its members, shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

History.
Acts 1984, ch. 864, § 38.

59-13-137. Permissible contracts and agreements.

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements, and make all necessary and proper stipulations, agreements, and contracts and arrangements with any other cooperative corporation, association, or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two (2) or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same personnel, methods, means and agencies for carrying on and conducting their respective businesses.

History.
Acts 1984, ch. 864, § 39.

59-13-138. Out-of-state corporations.

Any corporation or association organized under generally similar laws of another state shall be allowed to carry on any proper activities, operations or functions in this state upon compliance with the general regulations applicable to foreign corporations desiring to do business in this state, and the payment into the office of the secretary of state the same fees that are required to be paid under title 48, chapter 11 and by paying all other taxes which other foreign corporations are required to pay in Tennessee, and all contracts, which could be made by any association incorporated pursuant to this chapter made by or with such association, shall be legal and valid and enforceable in this state with all of the remedies set forth in this chapter.

History.
Acts 1984, ch. 864, § 40.

59-13-139. Restraint of trade — Monopolies.

No association organized pursuant to this chapter and complying with the terms of such chapter shall be deemed to be a conspiracy or a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or to fix prices arbitrarily, nor shall the marketing contracts and agreements between the association and its members or any agreements authorized in this chapter be considered illegal as such or in unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

History.
Acts 1984, ch. 864, § 41.

59-13-140. Fees — Liability for privilege tax.

(a) Each association, organized pursuant to this chapter, shall pay an annual fee of ten dollars ($10.00) only, in lieu of all franchise or license or corporation or other privilege taxes or taxes or charges upon reserves held by it for members; provided, however, that if any association organized pursuant

to this chapter sells to persons other than its own members any product or merchandise other than coal or its derivative products, such association shall be liable for any privilege tax with respect to such transactions or method of doing business imposed under the laws of Tennessee, other than franchise and excise taxes and corporation filing fees or charges upon reserves held by it for members.

(b) For filing articles of incorporation, an association organized pursuant to this chapter shall pay ten dollars ($10.00); and for filing an amendment to the articles, two dollars and fifty cents ($2.50).

History.
Acts 1984, ch. 864, §§ 43, 44.

59-13-141. Combinations — Amendment of preexisting charters.

Corporations not for profit, of this class, heretofore organized under the general incorporation laws, or laws later enacted, are empowered to combine into associations upon such terms as may be provided and agreed upon, or by one becoming a member of the other. Further, preexisting charters of such corporations are hereby amended, under the power reserved to the general assembly, so as to bring such corporations into conformity with this chapter, thus granting such corporations the powers and imposing upon them the duties and liabilities set forth in this chapter.

History.
Acts 1984, ch. 864, § 45.

Cross-References.
Corporations generally, title 48.
Corporations not for profit, title 48, chs. 51-69.

59-13-142. Exemption for subsidiaries.

All corporations organized as subsidiaries and controlled by any coal cooperative association formed in accordance with the laws of this state shall not be considered corporations organized for profit and doing business in Tennessee, or subject to any privilege tax levied by any law as a tax for the privilege of doing business for profit in Tennessee, it being the legislative intent to exempt by this section all such subsidiary corporations controlled by coal cooperative associations, where any and all profits earned by such subsidiary corporations are paid over to or expended for the benefit of such coal cooperative associations, with the result that the activities carried on by such corporations eventually promote and benefit the coal interest of this state.

History.
Acts 1984, ch. 864, § 46.

59-13-143. Applicability of existing exemptions.

Any exemptions whatsoever under all existing laws applying to coal or its derivatives in the possession or under the control of the individual producer shall apply similarly and completely to such products delivered by its former members, in the possession or under the control of the association.

History.
Acts 1984, ch. 864, § 36.

59-13-144. Applicability of corporation laws — Conflicting laws.

(a) The general corporation laws and all powers and rights under such laws shall apply to the associations organized pursuant to such laws, except where such provisions are in conflict or inconsistent with the express provisions of this chapter.

(b) Any law which is in conflict with this chapter shall be construed as not applying to the associations herein provided for.

History.
Acts 1984, ch. 864, §§ 35, 42.

Cross-References.
Corporations generally, title 48.

TITLE 60

OIL AND GAS

Chapter
1. Production of Oil and Gas.
2. Interstate Oil and Gas Compact [Repealed].
3. Inspection of Volatile Oils.
4. Production of Fuel Alcohol.

CHAPTER 1

PRODUCTION OF OIL AND GAS

Part 1. General Provisions

Section
60-1-101. Chapter definitions. [See contingent amendment to subdivision (1) and the Compiler's Notes.]
60-1-102. Waste prohibited.
60-1-103. Permits — Applications — Operators' plans.
60-1-104. Records and reports of production and sales — False reports.
60-1-105. Requested status under federal law — Applications and fees.
60-1-106. Spacing of oil wells.

Part 2. General Provisions of the Board

60-1-201. [Reserved.]
60-1-202. Powers of board.
60-1-203. Quorum of board.
60-1-204. Rules, regulations, and orders of board.
60-1-205. Power to subpoena and swear witnesses.
60-1-206. Enforcement of chapter.
60-1-207. Employment of personnel.
60-1-208. Travel expenses.
60-1-209. Notice to surface owners of oil and gas estates.

Part 3. Taxation

60-1-301. Severance tax levied — Exceptions — Disposition of revenues — Moratorium on taxes.
60-1-302. Reports and payment of tax.

Part 4. Violations

60-1-401. Violations — Penalties — Notice — Appeals — Hearing. [Current version. See second version of section and the Compiler's Notes.]
60-1-401. Violations — Penalties — Notice — Appeals — Hearing. [Contingent amendment. See first version of section and Compiler's Notes.]
60-1-402. Restraining violations.
60-1-403. Right to damages unimpaired.
60-1-404. Tennessee board of water quality, oil and gas reclamation fund. [See contingent amendment to subsection (a) and the Compiler's Notes.]

Part 5. Mineral Test Hole Regulatory Act

60-1-501. Short title.
60-1-502. Purpose.
60-1-503. Part definitions. [See contingent amendment to subdivisions (1) and (9)(D) and the Compiler's Notes.]
60-1-504. Administration of part — Powers of supervisor.
60-1-505. Permit required — Fees.
60-1-506. Application of Administrative Procedures Act.

Section
60-1-507. Supervisor to correct problems upon failure of owner, operator or surety.
60-1-508. Actions prohibited.
60-1-509. Civil and criminal penalties.
60-1-510. Injunctions.
60-1-511. Part supplemental.

Part 6. Oil and Gas Surface Owners Compensation

60-1-601. Short title.
60-1-602. Purpose.
60-1-603. Part definitions.
60-1-604. Compensation of surface owners for drilling operations.
60-1-605. Notice of claim.
60-1-606. Response to persons seeking compensation.
60-1-607. Arbitration.
60-1-608. Common law remedies preserved.

Part 7. Environmental Protection

60-1-701. Measures by operator at well site.
60-1-702. Access roads.
60-1-703. Manner of accomplishing reclamation of disturbed areas.
60-1-704. Release of reclamation bond.
60-1-705. Failure to perform — Forfeiture of bond — Securing performance.

PART 1

GENERAL PROVISIONS

60-1-101. Chapter definitions. [See contingent amendment to subdivision (1) and the Compiler's Notes.]

As used in this chapter, unless the context otherwise requires:

(1) **[Current version. See second version for contingent amendment and Compiler's Notes.]** "Board" means the Tennessee board of water quality, oil and gas created by § 69-3-104;

(1) **[Contingent amendment. See the Compiler's Notes.]** "Board" means the Tennessee board of energy and natural resources, created by § 69-3-104;

(2) "Casinghead gas" means any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil. It shall be treated as gas, if sold, for the purpose of paying privilege tax;

(3) "Condensate" means liquid hydrocarbons that were in the gaseous phase in the reservoir in initial reservoir conditions. It shall be treated as oil for the purpose of paying privilege tax;

(4) "Field" means the general area which is underlain or appears to be underlain by at least one pool and including the pool or pools beneath the area;

(5) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil, including condensate because it originally was in a gaseous phase in the reservoir;

(6) "Oil" means crude petroleum that was originally in an oil phase in the reservoir;

(7) "Operator" means any person who owns or is directly responsible for a business involved in some phase of the production, manufacture, refining or

distribution of petroleum oil or natural gas;

(8) "Owner" means the person who has the right to drill into and to produce from any pool, and to appropriate the production for such person or others;

(9) "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind;

(10) "Pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of the general structure which is completely separated from any other zone in the structure is covered by the term "pool" as used in this chapter;

(11) "Producer" means the owner of a well or wells capable of producing oil or gas, or both, in paying quantities;

(12) "Supervisor" means the commissioner of environment and conservation or the commissioner's designee; and

(13) "Waste," in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry. It includes:

(A) Underground waste and inefficient, excessive, or improper use or dissipation of reservoir energy, including gas energy and water drive, of any pool; and the locating, spacing, drilling, equipping, operating, or producing of any oil well or gas ultimately recoverable from any pool; and

(B) Surface waste and the inefficient storing of oil and the locating, spacing, drilling, equipping, operating or producing of oil wells or gas wells in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of oil or gas.

History.

Acts 1943, ch. 64, § 3; C. Supp. 1950, § 5240.3; Acts 1971, ch. 280, § 1; 1978, ch. 791, § 5; T.C.A. (orig. ed.), § 60-101; Acts 1992, ch. 693, § 21; 2012, ch. 986, § 29; 2018, ch. 839, § 14.

Compiler's Notes.

Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking, upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment rewrote the definition of "board" by substituting "board of energy and natural resources" for "board of water quality, oil, and gas".

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

Cross-References.

Municipal corporations, oil and natural gas drilling authorized, § 6-54-110.

Natural resources trust fund, title 11, ch. 14, part 3.

Petroleum Trade Practices Act, §§ 47-25-601 — 47-25-607, 47-25-611.

Printed contract forms for products extracted from or beneath the earth, § 47-50-110.

Law Reviews.

Conservation of Oil and Gas in Tennessee (Phillip J. Sheehe), 41 Tenn. L. Rev. 323.

Into the Fracking Fray: A Balanced Approach to Regulating Hydraulic Fracturing in Tennessee, 44 U. Mem. L. Rev. 667 (2014).

Attorney General Opinions.

Providing natural gas within city limits. OAG 14-42, 2014 Tenn. AG LEXIS 43 (4/1/14).

60-1-102. Waste prohibited.

The production or handling of crude petroleum oil or natural gas in such manner or under such conditions as to constitute or result in waste as defined in § 60-1-101 is each prohibited.

History.

Acts 1943, ch. 64, § 4; C. Supp. 1950, § 5240.4; T.C.A. (orig. ed.), § 60-102.

60-1-103. Permits — Applications — Operators' plans.

(a)(1) No person shall drill any well for oil or gas, or conduct any surface disturbances incidental to or in preparation for such drilling, until a permit application has been submitted to the supervisor. The supervisor shall not issue a permit until the conditions established by this subsection (a) have been met.

(2) An application for a permit to drill shall be filed with the supervisor. The supervisor shall prescribe the form of the application.

(3) The application shall include the exact location of the well, the name and address of the person or persons responsible for the drilling operations, the proposed depth of the well, the location of all existing or proposed roads providing access to the well site, and the location of all blue-line streams within one-half (½) mile of the well site or access roads.

(4) The application shall also include a plan for erosion control prevention of pollution of surface waters, and reclamation of all areas disturbed by the operations, including access roads. The plan shall conform to the requirements of part 7 of this chapter. The plan must be sufficiently detailed to allow an inspector to locate the site of the facilities to be constructed and to estimate the expected environmental impact, but does not have to include detailed engineering design drawings.

(5) No drilling shall begin until the permit has been approved.

(6) A processing fee for permits shall be submitted with the application in an amount specified in rules promulgated by the board, which shall not exceed the amount stated in § 68-203-103(h) for an oil and gas permit.

(b) All funds received by the commissioner under this chapter, except those under parts 3 and 4 of this chapter, together with any interest earned on the funds, shall be deposited into a separate account in the environmental protection fund created by § 68-203-101.

(c) The supervisor may require or approve modifications in the operator's plan if such modifications are necessary to prevent pollution or to promote reclamation.

(d) Upon approval, the operator's plan shall be a condition of the operator's

permit. Failure to comply with the plan shall be grounds for revocation of the permit and forfeiture of the bond.

History.
Acts 1943, ch. 64, § 5; C. Supp. 1950, § 5240.5; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; Acts 1978, ch. 791, § 4; T.C.A. (orig. ed.), § 60-111; Acts 1981, ch. 146, § 1; 1987, ch. 257, § 1; 2007, ch. 362, §§ 1-3; 2012, ch. 986, § 31.

Compiler's Notes.
Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

60-1-104. Records and reports of production and sales — False reports.

(a) It is the duty of every person producing, selling, gathering, transporting, or storing crude petroleum or natural gas from any well or wells in this state to keep and preserve suitable records of the amount of all such crude petroleum or natural gas produced, sold, gathered, transported, or stored, and the price received and paid therefor.

(b) Such person shall report such records to the oil and gas supervisor at such intervals as the board may direct and on forms provided by the supervisor.

(c) Anyone who shall intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this chapter, or by any rule, regulation or order made hereunder, or who for such purpose shall make or cause to be made any false entry in any account, record or memorandum kept by any person in connection with this chapter, or any rule, regulation or order made thereunder, or who for such purpose shall omit to make, or cause to be omitted, full, true and correct entries on such accounts, records or memoranda of all facts and transactions pertaining to the interest or activities in the oil and gas industry of such persons as may be required by the board under authority given in this chapter, or by any rule, regulation or order made hereunder, or who for such purpose shall remove out of the jurisdiction of the state, or mutilate, alter or by any other means falsify any book, record or other paper pertaining to the transactions regulated by this chapter, or by any rule, regulation or order made hereunder, is guilty of a Class C misdemeanor.

History.
Acts 1943, ch. 64, § 11; C. Supp. 1950, § 5240.11; T.C.A. (orig. ed.), § 60-112; Acts 1989, ch. 159, § 1; 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

60-1-105. Requested status under federal law — Applications and fees.

Any person who files with the board an application requesting a determination by the board of whether natural gas produced from a well qualifies for a requested status under § 102, 103, 107 or 108 of the Natural Gas Policy Act of 1978, Public Law No. 95-621, 92 Stat. 3350 (including any act of congress which amends or supersedes those sections of that act) which determination

the board is authorized to make under § 503 of that act, shall pay a fee of twenty-five dollars ($25.00) to the state treasurer through the supervisor at the time such application is filed. A separate fee shall be paid for each such application. All funds paid to the state treasurer pursuant to this section shall be disbursed by the state treasurer upon warrants drawn by the commissioner of finance and administration to defray expenses incurred in acting upon such Natural Gas Policy Act determinations.

History.
Acts 1984, ch. 677, § 1.

Compiler's Notes.
Sections 102, 103, 107, 108 and 503 of the Natural Gas Policy Act of 1978, Public Law No. 95-621, 92 Stat. 3350, are codified as 15 U.S.C. §§ 3312, 3313, 3317, 3318, and 3413, respectively.

60-1-106. Spacing of oil wells.

(a)(1) Wells drilled in search of oil or gas to a depth of less than two thousand five hundred feet (2,500′) shall not be located closer than four hundred feet (400′) from any other well completed in, drilling to, or for which a permit shall have been granted to drill to the same pool. The distance of such oil and gas wells from any property line shall not be closer than two hundred feet (200′).

(2) This subsection (a) applies only in counties having a population of not less than seventeen thousand five hundred fifty (17,550) and not more than seventeen thousand six hundred fifty (17,650), according to the 1980 federal census or any subsequent federal census.

(b)(1) Wells drilled in search of oil and gas shall not be located closer than four hundred feet (400′) from any other well completed in, drilling to, or for which a permit shall have been granted to drill to the same pool; and not closer than two hundred feet (200′) from any property line.

(2) This subsection (b) applies only in counties having a population of not less than four thousand three hundred (4,300) and not more than four thousand four hundred (4,400) or in counties having a population of not less than seven thousand six hundred fifty (7,650) nor more than seven thousand seven hundred (7,700), according to the 1980 federal census or any subsequent federal census.

History.
Acts 1984, ch. 967, §§ 1-3; 1986, ch. 802, § 1; 1987, ch. 215, § 1; 1987, ch. 455, § 1; 1988, ch. 749, § 1; 1990, ch. 1018, § 1; 1990, ch. 1019, § 1; 1992, ch. 634, § 1.

Compiler's Notes.
For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

PART 2

GENERAL PROVISIONS OF THE BOARD

60-1-201. [Reserved.]

60-1-202. Powers of board.

(a) The board has jurisdiction and authority:

(1) Over all persons and property necessary to enforce this chapter;

(2) To make such inquiries as necessary to determine whether or not waste exists or is imminent;

(3) To collect data; to make investigations and inspections; to examine properties, leases, papers, books, and records including drilling records and logs; to examine, check, test, and gauge oil and gas wells, tanks, refineries, and modes of transportation; to hold hearings; to provide for the keeping of records and making of reports; and to take such action as may be necessary to enforce this chapter;

(4) To make rules, regulations, and orders for the following purposes:

(A) To require the drilling, casing, and plugging of wells in such manner as to prevent the escaping of oil and gas out of one (1) stratum to another; to prevent intrusion of water to oil and gas strata; to prevent pollution of fresh water by oil, gas, or salt water; to protect potentially minable coal and other minerals; and to require bond for the plugging of each dry or abandoned well;

(B) To require notification to the supervisor, upon such forms as the supervisor may prescribe, of the intention to drill any well for oil or gas;

(C) To require the filing of logs, including electrical logs and drilling records, cores and drill cutting samples, and all other downhole surveys and information, within thirty (30) days following the cessation of drilling operations of the well;

(D) To prevent wells from being drilled, operated, and produced in such manner as to cause injury to neighboring leases or property;

(E) To prevent the drowning by water of any oil and gas stratum in paying quantities, and to prevent the premature and irregular encroachment of water which would affect the total ultimate recovery of oil and gas;

(F) To require the operation of wells with efficient gas-oil ratios and to fix such ratios;

(G) To prevent "blow outs," "caving" and "seepage" in the same sense that conditions indicated by such terms are generally understood in the oil and gas business;

(H) To prevent fires;

(I) To identify ownership of oil and gas wells, producing leases, refineries, tanks, plants, structures, and all storage and transportation equipment and facilities;

(J) To regulate the "shooting" and chemical treatment of wells;

(K) To regulate secondary recovery methods;

(L) To regulate the spacing of wells;

(M) To provide for the forced integration of separately owned tracts and other property ownership into drilling and production units;

(N) To provide that the board may, in the absence of a voluntary agreement and after a sixty-day notice to owners, force a volumetric or surface poolwide unit; provided, that the pool producers owning more than fifty percent (50%) of the pool acreage request such unitization of the pool;

(O) In the absence of an acceptable plan of unitization by the operators, the board may shut in the pool to prevent waste and to protect correlative rights until an acceptable plan is presented by the operators;

(P) To regulate and prescribe procedures with respect to applications for and determinations of whether natural gas produced from a well qualifies for a requested status under § 102, 103, 107 or 108 of the Natural Gas Policy Act of 1978, Public Law No. 95-621, 92 Stat. 3350 (including any act of Congress which amends or supersedes those sections of that act);

(Q) To require that any person conducting oil or gas operations, or causing surface disturbances preparatory to or incidental to such operations, conduct such operations in a manner which will prevent or mitigate adverse environmental impacts, such as soil erosion and water pollution, and perform reclamation of all areas disturbed by the operations, including access roads, as prescribed by part 7 of this chapter; and

(R) To require that any person conducting oil and gas operations, or causing surface disturbances preparatory to or incidental to such operations, for wells permitted and drilled after July 1, 1987, post a bond or bonds to secure compliance with the requirements of this chapter and the rules promulgated under this chapter, both for plugging of the wells and reclamation of the surface in an amount not to exceed fifteen thousand dollars ($15,000) per single well site. At sites with more than one (1) well, the portion of the bond or bonds to secure compliance with plugging requirements shall not exceed ten thousand dollars ($10,000) per well. The bond shall be filed with the supervisor at the time an operator's permit application is submitted, and shall be effective from the time the initial surface disturbances begin. As an alternative to the performance bond required in this subdivision (a)(4)(R), a person may submit:

(i) A federally insured certificate of deposit issued by any financial institution in this state to be placed in a separate departmental account that shall not revert to the general fund;

(ii) An irrevocable letter of credit issued by any federally insured bank or savings and loan association; or

(iii) Other cash or securities in an amount mutually agreed to by the supervisor and the operator, to be placed in a separate departmental account that shall not revert to the general fund.

(b) The applicant for any permit must swear to facts set out in any application for a permit to drill or deepen a well, or reopen a plugged or abandoned well, under the rules made by the board pursuant to this title.

History.

Acts 1943, ch. 64, § 5; C. Supp. 1950, § 5240.5; Acts 1971, ch. 280, §§ 2-4; 1972, ch. 541, § 1; 1977, ch. 46, § 1; T.C.A. (orig. ed.), § 60-104; Acts 1984, ch. 677, § 2; 1987, ch. 257, § 2; 1992, ch. 618, § 1; 2007, ch. 362, §§ 4-7; 2012, ch. 986, § 32.

Compiler's Notes.

Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

Sections 102, 103, 107, 108 and 503 of the Natural Gas Policy Act of 1978, Public Law No. 95-621, 92 Stat. 3350, are codified as 15 U.S.C. §§ 3312, 3313, 3317, 3318, and 3413, respectively.

Cross-References.

Maximum term of leases, § 66-7-103.

Law Reviews.
Conservation of Oil and Gas in Tennessee (Phillip J. Sheehe), 41 Tenn. L. Rev. 323.

60-1-203. Quorum of board.

Any three (3) members of the board shall constitute a quorum, but three (3) affirmative votes shall be necessary for the adoption of any rule or order of the board.

History.
Acts 1943, ch. 64, § 2; C. Supp. 1950, § 5240.2; Acts 1978, ch. 791, § 3; T.C.A. (orig. ed.), § 60-106.

60-1-204. Rules, regulations, and orders of board.

(a) The board shall prescribe its rules of order, procedure in hearings or other proceedings before it under this chapter.

(b) No rule or order, in the absence of an emergency, may be made by the board except after a public hearing upon at least ten (10) days' notice in a manner and form prescribed by the board. Such public hearing shall be held at such time, place, and manner as may be prescribed by the board and any person having any interest in the subject matter of the hearing shall be entitled to be heard.

(c) If an emergency appears to the board to exist, it may act without a public hearing and the rule, regulation, or order shall be valid. This emergency rule or regulation shall remain in force not longer than fifteen (15) days after its effective date, and, in any event, shall expire when the rule or regulation made after due notice and hearing shall become effective.

(d) All rules and regulations of the board shall be entered in writing by the supervisor in a book kept for such purposes, which shall be a public record and open to inspection. A copy of such rules and regulations certified by the supervisor shall be received in evidence in all courts in this state with the same effect as the original.

History.
Acts 1943, ch. 64, § 6; C. Supp. 1950, § 5240.6; T.C.A. (orig. ed.), § 60-107.

Law Reviews.
An Examination of the Tennessee Law of Administrative Procedure (George Street Boone), 1 Vand. L. Rev. 339.

60-1-205. Power to subpoena and swear witnesses.

(a) The board, or any member thereof, is empowered to issue subpoenas for witnesses, to require their attendance and the giving of testimony before it, and to require the production of books, papers and records in any proceeding before the board as may be material upon questions lawfully before the board. Such subpoenas shall be served by the sheriff or any other officer authorized by law to serve process in this state. No person shall be excused from attending and testifying, or from producing books, papers and records before the board or a court, or from obedience to the subpoena of the board or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of such person may tend to incriminate the person or

subject the person to a penalty or forfeiture; provided, that nothing herein shall be construed as requiring any person to produce any books, papers or records, or to testify in response to any inquiry, not pertinent to some question lawfully before such board or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person may be required to testify or produce evidence, documentary or otherwise, before the board or court, or in obedience to its subpoena; provided, that no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

(b) In case of failure or refusal on the part of any person to comply with any subpoena issued by the board or any members thereof, or in case of the refusal of any witness to testify or answer to any matter regarding which the person may be lawfully interrogated, any circuit court in this state in the county where the board is sitting, on application of the board, may in term time or vacation, issue an attachment for such person and compel the person to comply with such subpoena and to attend before the board and produce such documents, and give testimony upon such matters, as may be lawfully required, and such court shall have the power to punish for contempt as in case of disobedience of like subpoenas issued by or from such court, or for a refusal to testify therein. The chair or any member of the board is authorized to administer oaths to witnesses, and any false swearing shall constitute perjury and be punished in accordance with the general criminal statutes relating to perjury.

History.
Acts 1943, ch. 64, § 7; C. Supp. 1950, § 5240.7; impl. am. Acts 1978, ch. 754, § 1; T.C.A. (orig. ed.), § 60-108.

Cross-References.
Perjury, title 39, ch. 16, part 7.

60-1-206. Enforcement of chapter.

The supervisor is charged with enforcing this chapter and the regulations and orders of the board.

History.
Acts 1943, ch. 64, § 2; C. Supp. 1950, § 5240.2; T.C.A. (orig. ed.), § 60-109.

60-1-207. Employment of personnel.

The oil and gas supervisor, with the concurrence of the board, shall have the authority, and it shall be the supervisor's duty to employ all necessary personnel to carry out this chapter.

History.
Acts 1943, ch. 64, § 10; C. Supp. 1950, § 5240.10; T.C.A. (orig. ed.), § 60-110.

60-1-208. Travel expenses.

Board members and the supervisor shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations as promulgated by

the department of finance and administration and approved by the attorney general and reporter.

History.
Acts 1976, ch. 806, § 1(63); T.C.A., § 60-119.

60-1-209. Notice to surface owners of oil and gas estates.

(a)(1) No later than the filing of the application with the board for a permit to drill and prior to initiating any site preparation, the applicant shall give notice by certified mail, return receipt requested, of the applicant's intent to drill to the property owner or owners of the surface of the land to be drilled or to be affected by the surface disturbances listed in subdivision (a)(3).

(2) The property owners to be notified under this section shall be the property owners of record in the property tax assessor's office in the county where the property is located.

(3) The notice shall include the proposed location of the oil or gas well site, the proposed location of all new ingress and egress, the location of all diversions, drilling pits, dikes, and related structures and facilities, the location of proposed storage tanks and all other surface disturbances.

(4) The notice shall state that the property owner and applicant have fifteen (15) working days from the date of mailing to discuss the location of surface disturbances in connection with the drilling operation. It shall also state that if the property owner and applicant are unable to resolve differences regarding the location of surface disturbances, either or both may request in writing a hearing before the supervisor or the supervisor's designee. The notice shall provide the name and address of the supervisor.

(b)(1) The applicant and the property owners given notice under subsection (a) shall attempt to resolve any differences between them regarding surface disturbances related to the proposed drilling operation.

(2) Any property owners entitled to notice or the applicant may request, within fifteen (15) working days of the mailing of the notice required in subsection (a), that the supervisor or the supervisor's designee conduct a hearing. A request for hearing under this section shall be in writing to the supervisor by certified mail, return receipt requested. The purpose of the hearing will be to minimize the impact of the proposed drilling operation on the surface of the land.

(3) The hearing shall be conducted as a contested case pursuant to the Uniform Administrative Procedures Act, title 4, chapter 5, part 3, and shall be held before a hearing officer sitting alone. For purposes of the hearing, the supervisor or the supervisor's designee shall be the hearing officer. The hearing shall be held within ten (10) working days of receipt of a request for hearing by the supervisor or the supervisor's designee and shall be held in the county of the proposed oil and gas well. Notice of the hearing shall be given to all persons entitled to notice under subsection (a) and the applicant.

(4) The hearing officer shall render a decision within ten (10) calendar days of the hearing. The decision shall be considered a final order not subject to further agency review pursuant to § 4-5-315(a)(1).

(5) For purposes of this subsection (b), "working day" means all calendar

days excluding Saturdays, Sundays and legal holidays as designated in § 15-1-101.

(c) Notwithstanding any other requirements for a permit to drill, such a permit may only issue:

(1) If the applicant submits to the supervisor statements of no objection signed by all property owners entitled to notice under subsection (a);

(2) If a hearing is not requested as provided in subdivision (b)(2); or

(3) Upon the issuing of a final order pursuant to subdivision (b)(4).

History.
Acts 1984, ch. 863, § 1.

PART 3

TAXATION

60-1-301. Severance tax levied — Exceptions — Disposition of revenues — Moratorium on taxes.

(a) There is levied a severance tax on all gas and oil removed from the ground in Tennessee. The measure of the tax for such gas and oil shall be three percent (3%) of the sale price of such gas and oil. Every person actually engaged in severing oil or gas, or actually operating oil or gas property under contracts or agreements requiring direct payments to the owners of any royalty interest, excess royalty or working interest, either in money or otherwise, shall be liable for the tax imposed by this section and shall, prior to making any such payments, withhold from any quantity or amount due the amount of tax due pursuant to this section.

(b) The tax shall be levied for the use and benefit of the state, as well as the county governments and one third (⅓) of all revenues collected from the tax shall be allocated to the county which was the site of the wellhead for that gas or oil. The remaining two thirds (⅔) of such revenues shall be deposited to the credit of the state treasurer as a part of the general funds of the state.

(c) No other tax shall be imposed on such gas and oil by the state, counties or any other political subdivision of the state; provided, however, that:

(1) Free gas used by the property owner or tenant under the terms of the lease, unless it be in lieu of cash payment; and

(2) Gas which has been injected into the ground for underground storage and thereafter withdrawn shall not be subject to this, or any taxation.

History.
Acts 1943, ch. 64, § 13; C. Supp. 1950, § 5240.13; Acts 1963, ch. 106, § 1; 1978, ch. 761, § 115; 1978, ch. 777, § 1; 1979, ch. 153, § 1; T.C.A. (orig. ed.), § 60-116; Acts 1981, ch. 155, § 1; 1982, ch. 878, § 1.

60-1-302. Reports and payment of tax.

The severance tax imposed in this part shall be payable as follows:

(1) On or before the twentieth day of each month the person liable for the tax shall file with the commissioner of revenue, on forms prescribed by the commissioner, a report of all oil removed from the ground during the preceding month, and shall remit to the commissioner of revenue therewith

the amount of tax due for the period covered by the report;

(2) On or before the twentieth day of each month the person liable for the tax shall file with the commissioner, on forms prescribed by the commissioner, a report of all gas removed from the ground during the second preceding month and shall remit to the commissioner therewith the amount of tax due for the period covered by the report.

History.
Acts 1943, ch. 64, § 14; C. Supp. 1950, § 5540.14; impl. am. Acts 1959, ch. 9, § 14; 1979, ch. 153, § 2; T.C.A. (orig. ed.), § 60-117; Acts 1981, ch. 155, § 2; 1984, ch. 634, § 1; 1988, ch. 526, § 18.

PART 4

VIOLATIONS

60-1-401. Violations — Penalties — Notice — Appeals — Hearing. [Current version. See second version of section and the Compiler's Notes.]

(a) The Tennessee board of water quality, oil and gas through the supervisor shall have the authority to assess monetary penalties as provided in subsections (c)-(e) for any violation of this chapter, rules and regulations, or any order adopted by the board. In making such assessment, the board shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the operator charged, the gravity of the violation, the good faith of the operator, and the operator's history of previous violations.

(b) If, upon an inspection or investigation, the supervisor or any of the supervisor's authorized personnel shall determine that any operator is not in compliance with any standard or regulation or rule or order of the board promulgated by the board pursuant to this chapter, the supervisor shall with reasonable promptness and in no event later than six (6) months following the inspection, issue to the operator by certified mail a written citation that states the nature and, if appropriate, the location of the violation, including a reference to the provision of the chapter and the regulation alleged to have been violated. In addition, the citation shall fix a reasonable time for abatement of the violation. If the issuing supervisor has reason to believe that such violation, or the failure to abate such violation, should result in the assessment of a penalty under subsections (c)-(e), the citation may so state.

(c) Any operator who has received a citation for a violation of this chapter, rules and regulations or order of the board, promulgated pursuant to this chapter and has failed to correct such violation within the period of correction of this citation, shall be assessed a penalty of up to one thousand dollars ($1,000) for each day the violation exists. The period of correction may be suspended or lengthened by the assessing party upon a showing by the operator of a good faith effort to comply with the correction requirements and that failure to comply with the correction requirements is due to factors beyond the operator's reasonable control.

(d) Any operator who has received a citation for a violation of this chapter, or rules and regulations or order of the board, and such violation is specifically

determined not to be of a serious nature, may be assessed a penalty of up to one thousand dollars ($1,000) for each such violation.

(e) Any operator who willfully or repeatedly violates the requirements of this chapter, or rules and regulations, or order of the board promulgated pursuant to this chapter may be assessed a penalty of up to ten thousand dollars ($10,000) for each violation.

(f) Penalties provided for by subsections (c)-(e) shall be imposed in the manner hereinafter provided. Whenever the Tennessee board of water quality, oil and gas, through the supervisor, has determined that such a penalty should be assessed against an operator, a written notice and assessment of a penalty shall be issued to the operator by certified mail, return receipt requested, stating the amount of the penalty to be assessed and the reason therefor (which may be done by reference to citations issued prior to or simultaneously with such notification).

(g) Any citation or notice and assessment of a penalty issued pursuant to this section shall inform the operator of the operator's right to appeal such citation or assessment of a penalty to the Tennessee board of water quality, oil and gas. Any such citation or assessment of a penalty shall become final twenty (20) days after the receipt of such citation or notice and assessment of penalty by the operator unless the operator, within the period of twenty (20) days, shall file a written notice of appeal with the supervisor.

(h) If the operator files an appeal of such citation or assessment of a penalty as provided by subsection (g), the proceedings on such appeal shall be conducted as a contested case and shall be heard before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless settled by the parties. The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the appeal is filed. The scheduling order for the contested case issued by the administrative judge shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing. The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to § 4-5-315, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and allow each party an opportunity to present oral argument. If appealed to the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness. In such appeals, the board shall thereafter render a final order, in accordance with § 4-5-314, affirming, modifying, remanding, or vacating the supervisor's citation or assessment of a penalty. A final order rendered pursuant to this section is effective upon its

entry, except as provided in § 4-5-320(b) unless a later effective date shall be stated therein. A petition to stay the effective date of a final order may be filed under § 4-5-316. A petition for reconsideration of a final order may be filed pursuant to § 4-5-317. Judicial review of a final order may be sought by filing a petition for review in accordance with § 4-5-322. An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; provided, however, that in other matters before the board, it may be considered but shall not be binding on the board.

History.

Acts 1978, ch. 791, § 1; T.C.A., § 60-113; Acts 1984, ch. 700, §§ 1, 2; 2007, ch. 362, § 8; 2013, ch. 181, § 1.

Compiler's Notes.

Acts 2012, ch. 986, § 29 substituted "Tennessee board of water quality, oil, and gas" for "oil and gas board".

Acts 2013, ch 181, § 19 provided that for the purpose of construing the act in relation to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the act shall be deemed to be procedural in nature. It is the intent of the general assembly that Acts 2013, chapter 181 and the Uniform Administrative Procedures Act shall be complied with; however, when in conflict, the provisions of Acts 2013, chapter 181 shall govern.

Acts 2013, ch 181, § 20 provided that the act, which amended subsection (h), shall apply to all cases filed on or after July 1, 2013.

Law Reviews.

The Tennessee Court Systems — Prosecution, 8 Mem. St. L. Rev. 477.

60-1-401. Violations — Penalties — Notice — Appeals — Hearing. [Contingent amendment. See first version of section and Compiler's Notes.]

(a) The Tennessee board of energy and natural resources through the supervisor shall have the authority to assess monetary penalties as provided in subsections (c)-(e) for any violation of this chapter, rules and regulations, or any order adopted by the board. In making such assessment, the board shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the operator charged, the gravity of the violation, the good faith of the operator, and the operator's history of previous violations.

(b) If, upon an inspection or investigation, the supervisor or any of the supervisor's authorized personnel shall determine that any operator is not in compliance with any standard or regulation or rule or order of the board promulgated by the board pursuant to this chapter, the supervisor shall with reasonable promptness and in no event later than six (6) months following the inspection, issue to the operator by certified mail a written citation that states the nature and, if appropriate, the location of the violation, including a reference to the provision of the chapter and the regulation alleged to have been violated. In addition, the citation shall fix a reasonable time for abatement of the violation. If the issuing supervisor has reason to believe that such violation, or the failure to abate such violation, should result in the assessment of a penalty under subsections (c)-(e), the citation may so state.

(c) Any operator who has received a citation for a violation of this chapter, rules and regulations or order of the board, promulgated pursuant to this chapter and has failed to correct such violation within the period of correction of this citation, shall be assessed a penalty of up to one thousand dollars ($1,000) for each day the violation exists. The period of correction may be suspended or lengthened by the assessing party upon a showing by the

operator of a good faith effort to comply with the correction requirements and that failure to comply with the correction requirements is due to factors beyond the operator's reasonable control.

(d) Any operator who has received a citation for a violation of this chapter, or rules and regulations or order of the board, and such violation is specifically determined not to be of a serious nature, may be assessed a penalty of up to one thousand dollars ($1,000) for each such violation.

(e) Any operator who willfully or repeatedly violates the requirements of this chapter, or rules and regulations, or order of the board promulgated pursuant to this chapter may be assessed a penalty of up to ten thousand dollars ($10,000) for each violation.

(f) Penalties provided for by subsections (c)-(e) shall be imposed in the manner hereinafter provided. Whenever the Tennessee board of energy and natural resources, through the supervisor, has determined that such a penalty should be assessed against an operator, a written notice and assessment of a penalty shall be issued to the operator by certified mail, return receipt requested, stating the amount of the penalty to be assessed and the reason therefor (which may be done by reference to citations issued prior to or simultaneously with such notification).

(g) Any citation or notice and assessment of a penalty issued pursuant to this section shall inform the operator of the operator's right to appeal such citation or assessment of a penalty to the Tennessee board of energy and natural resources. Any such citation or assessment of a penalty shall become final twenty (20) days after the receipt of such citation or notice and assessment of penalty by the operator unless the operator, within the period of twenty (20) days, shall file a written notice of appeal with the supervisor.

(h) If the operator files an appeal of such citation or assessment of a penalty as provided by subsection (g), the proceedings on such appeal shall be conducted as a contested case and shall be heard before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless settled by the parties. The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the appeal is filed. The scheduling order for the contested case issued by the administrative judge shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing. The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to § 4-5-315, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and allow each party an opportunity to present oral argument. If appealed to the board, the review of

the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness. In such appeals, the board shall thereafter render a final order, in accordance with § 4-5-314, affirming, modifying, remanding, or vacating the supervisor's citation or assessment of a penalty. A final order rendered pursuant to this section is effective upon its entry, except as provided in § 4-5-320(b) unless a later effective date shall be stated therein. A petition to stay the effective date of a final order may be filed under § 4-5-316. A petition for reconsideration of a final order may be filed pursuant to § 4-5-317. Judicial review of a final order may be sought by filing a petition for review in accordance with § 4-5-322. An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; provided, however, that in other matters before the board, it may be considered but shall not be binding on the board.

History.

Acts 1978, ch. 791, § 1; T.C.A., § 60-113; Acts 1984, ch. 700, §§ 1, 2; 2007, ch. 362, § 8; 2013, ch. 181, § 1; 2018, ch. 839, § 15.

Compiler's Notes.

Acts 2012, ch. 986, § 29 substituted "Tennessee board of water quality, oil, and gas" for "oil and gas board".

Acts 2013, ch 181, § 19 provided that for the purpose of construing the act in relation to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the act shall be deemed to be procedural in nature. It is the intent of the general assembly that Acts 2013, chapter 181 and the Uniform Administrative Procedures Act shall be complied with; however, when in conflict, the provisions of Acts 2013, chapter 181 shall govern.

Acts 2013, ch 181, § 20 provided that the act, which amended subsection (h), shall apply to all cases filed on or after July 1, 2013.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking, upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment substituted "board of energy and natural resources" for "board of water quality, oil and gas" throughout. See the Compiler's Notes.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

Law Reviews.

The Tennessee Court Systems — Prosecution, 8 Mem. St. L. Rev. 477.

60-1-402. Restraining violations.

Whenever it shall appear that any person is violating or threatening to violate any provisions of this chapter, or any rule, regulation or order made hereunder, and unless the board without litigation can effectively prevent further violation or threat of violation, then the board, through the attorney general, who may call to the attorney general's assistance the district attorney general of the district in which suit is instituted, shall bring suit in the name of the state of Tennessee against such person in the circuit or chancery court in the county of the residence of the defendant, or if there be more than one (1) defendant, in the circuit or chancery court in the county of the residence of any

of same, or in the circuit or chancery court in the county in which such violation is alleged to have occurred, to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit the board, in the name of the state of Tennessee, may obtain an injunction prohibitory and mandatory, including temporary restraining orders and temporary injunctions as the facts may warrant.

History.
Acts 1943, ch. 64, § 8; C. Supp. 1950, § 5240.8; T.C.A. (orig. ed.), § 60-114.

Law Reviews.
Conservation of Oil and Gas in Tennessee (Phillip J. Sheehe), 41 Tenn. L. Rev. 323.

60-1-403. Right to damages unimpaired.

Nothing in this chapter contained or authorized and no suit by or against the board and no penalties imposed or claimed against any person for violating any provision of this chapter, or any rule, regulation or order issued hereunder, and no forfeiture shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any provisions of this chapter or any rule, regulation or order issued hereunder. Any person so damaged by the violation may sue for and recover such damages as the person may show that the person is entitled to receive.

History.
Acts 1943, ch. 64, § 9; C. Supp. 1950, § 5240.9; T.C.A. (orig. ed.), § 60-115.

60-1-404. Tennessee board of water quality, oil and gas reclamation fund. [See contingent amendment to subsection (a) and the Compiler's Notes.]

(a) **[Current version. See second version for contingent amendment and the Compiler's Notes.]** All sums received in payment of penalties assessed by the board pursuant to this part shall be placed in the state treasury in a separate account to be designated as the Tennessee board of water quality, oil and gas reclamation fund.

(a) **[Contingent amendment. See the Compiler's Notes.]** All sums received in payment of penalties assessed by the board pursuant to this part shall be placed in the state treasury in a separate account to be designated as the Tennessee board of energy and natural resources reclamation fund.

(b) This fund shall be available to the board for expenditure for site protection and reclamation work on land and waters damaged by surface disturbances. The fund may be expended for such work following default and notice of forfeiture of bond, if the bond furnished by the operator is not sufficient to cover the cost of reclamation. It may also be expended for such work if the operations which caused the damage were not covered by the bond, including operations conducted before January 1, 1988.

(c) This fund shall also be available to the board for expenditure for the plugging of dry or abandoned wells. The fund may be expended for such work, following default and notice of forfeiture, if the bond furnished by the operator is not sufficient to cover the cost of plugging. It also may be expended to plug

dry or abandoned wells not covered by a bond, including wells drilled before January 1, 1988.

(d) Any unencumbered or unexpended balance of this fund remaining at the end of any fiscal year together with any interest earned thereon shall not revert to the general fund, but shall be carried forward until expended for the purpose of site protection and reclamation or the plugging of dry or abandoned wells, as provided in this section.

History.
Acts 1987, ch. 257, § 4; 2007, ch. 362, § 9; 2013, ch. 94, § 1; 2018, ch. 839, § 16.

Compiler's Notes.
Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking, upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.
The 2018 amendment substituted "board of energy and natural resources" for "board of water quality, oil and gas" in (a). See the Compiler's Notes.

Effective Dates.
Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

PART 5

MINERAL TEST HOLE REGULATORY ACT

60-1-501. Short title.

This part shall be known and may be cited as the "Mineral Test Hole Regulatory Act."

History.
Acts 1982, ch. 654, § 4.

Law Reviews.
Into the Fracking Fray: A Balanced Approach to Regulating Hydraulic Fracturing in Tennessee, 44 U. Mem. L. Rev. 667 (2014).

60-1-502. Purpose.

The purpose of this part is to:

(1) Regulate the drilling of mineral test holes in order to prevent the pollution of potable water resources, both surface and subsurface, as the result of the introduction of undesirable substances, including natural brines, oil, gas, or mineralized waters through the process of the drilling of mineral test holes; and

(2) Provide basic geologic data to the state relating to oil, gas and water occurrences.

History.
Acts 1982, ch. 654, § 4.

60-1-503. Part definitions. [See contingent amendment to subdivisions (1) and (9)(D) and the Compiler's Notes.]

As used in this part, unless the context otherwise requires:

(1) **[Current version. See second version for contingent amendment and Compiler's Notes.]** "Board" means the Tennessee board of water quality, oil and gas;

(1) **[Contingent amendment. See the Compiler's Notes.]** "Board" means the Tennessee board of energy and natural resources, created by § 69-3-104;

(2) "For exploratory purposes" means drilling of mineral test holes for the specific purpose of exploring for mineral resources;

(3) "Mineral" means any substance with economic value whether organic or inorganic that can be extracted from the earth, but excluding oil and gas;

(4) "Mineral test hole" means any hole in excess of one hundred feet (100′) drilled during the exploration for minerals but excludes auger drilling in surficial or otherwise unconsolidated material, drilling in conjunction with mining or quarrying operations, drill holes for the exploration of oil and/or gas, water, structural foundations, and seismic surveys;

(5) "Natural brine" means naturally occurring mineralized water other than potable or fresh water;

(6) "Operator" means the person, whether owner or not, supervising or responsible for drilling, operating, repairing, abandoning or plugging of mineral test holes subject to this part;

(7) "Owner" means the person who has or attains the right to drill, convert or operate any mineral test hole subject to this part;

(8) "Person" means any individual, corporation, company, association, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative or private organization of any kind;

(9) "Pollution" means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters, soils, animal, fish and aquatic life or surface property of this state as will:

(A) Result or will likely result in harm, potential harm, or detriment to the public health, safety, or welfare;

(B) Result or will likely result in harm, potential harm, or detriment to the health of animals, birds, fish, or aquatic life;

(C) Render or will likely render the waters, soils, animal, fish and aquatic life or surface property substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other reasonable uses; or

(D) **[Current version. See second version for contingent amendment and Compiler's Notes.]** Leave or will likely leave the waters in such condition as to violate any standards of water quality established by the Tennessee board of water quality, oil and gas; and

(D) **[Contingent amendment. See the Compiler's Notes.]** Leave or will likely leave the waters in such condition as to violate any standards of water quality established by the Tennessee board of energy and natural resources, created by § 69-3-104; and

(10) "Supervisor" means the commissioner or the commissioner's designee.

History.

Acts 1982, ch. 654, § 4; 1992, ch. 693, § 23; 2018, ch. 839, §§ 17, 18.

Compiler's Notes.

Acts 2012, ch. 986, § 29 substituted "Tennessee board of water quality, oil, and gas" for "oil and gas board".

The former water quality control board, formerly referred to in this section, was terminated by Acts 2012, ch. 986, § 26, and its responsibilities were transferred to the Tennessee board of water quality, oil, and gas, created by § 69-3-104.

Acts 2018, ch. 839, § 44 provided that the governor shall take all action necessary to prepare and submit for approval all necessary requests for federal grant funding and applications for authorization to the appropriate federal authority to obtain exclusive jurisdiction over surface coal mining and reclamation operations and the maximum federal money available for those purposes in an expeditious manner.

Acts 2018, ch. 839, § 45 provided that the commissioner of environment and conservation shall notify the secretary of state and the executive secretary of the Tennessee code commission of the date this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Acts 2018, ch. 839, § 47 provided that the act, which amended this section, shall take effect, including for purposes of rulemaking, upon the deposit of federal funds in the Coal Mining Protection Fund.

Amendments.

The 2018 amendment substituted "board of energy and natural resources, created by § 69-3-104" for "board of water quality, oil and gas" in the definition of "board" and in (D) of the definition of "pollution". See the Compiler's Notes.

Effective Dates.

Acts 2018, ch. 839, § 47. [See Compiler's Notes.]

60-1-504. Administration of part — Powers of supervisor.

(a) The supervisor shall administer and enforce this part.

(b) The supervisor shall exercise the following powers to:

(1) Adopt rules and regulations necessary for the implementation of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(2) Make inspections of drilling operations and require the keeping of accurate records;

(3) Require that the location, drilling, deepening, reworking, reopening, casing and plugging of mineral test holes subject to this part be accomplished in a manner which prevents surface and underground pollution;

(4) Require on all mineral test holes the keeping of data and the filing of such data with the supervisor which are appropriate to the purposes of this chapter. Oil, gas and hydrologic data obtained from the drilling of mineral test holes are deemed appropriate to the purposes of this part. This information shall be held confidential by the supervisor for a period of six (6) months at the request of the operator;

(5) Release to the board for meetings and hearings only data which are necessary to the administration of this part;

(6) Order by written notice, the immediate suspension or prompt correction of any operation, condition, or practice found to exist which is causing or resulting in, or threatening to cause or result in, surface or underground pollution. Orders shall remain in force until cancelled by the supervisor, or modified by the board, or the courts;

(7) Require the filing of adequate surety or security bonds and to provide for the release thereof;

(8) Qualify persons for blanket permits; and

(9) Bring proceedings at law or in equity for the enforcement of this part and rules, regulations or orders promulgated thereunder in the circuit or chancery court of the county in which a violation is alleged to have occurred.

History.
Acts 1982, ch. 654, § 4; 2007, ch. 362, § 10.

Cross-References.
Confidentiality of public records, § 10-7-504.

60-1-505. Permit required — Fees.

(a) A person shall not drill a mineral test hole for exploratory purposes until the owner, directly or through the owner's authorized representative, files a written application for a permit to drill, files an approved surety or security bond, and receives a permit in accordance with the rules of the supervisor. A fee shall be submitted with the application in an amount to be set in rules to be promulgated by the supervisor not to exceed the amount stated in § 68-203-103(h) for a mineral test hole permit fee. Within ten (10) days after receiving the application and fee, the supervisor shall issue or deny the permit. No permit shall be issued to any owner or owner's authorized representative who is in violation of this part or any rules promulgated thereunder.

(b) Upon request, the supervisor may issue a blanket permit to qualified persons to drill mineral test holes within a limited or local area where an extensive drilling exploration program is planned.

(c) All information pertaining to the application for and issuance of permits for mineral test holes subject to this part shall be held confidential.

History.
Acts 1982, ch. 654, § 4; 2007, ch. 362, §§ 11, 12.

Cross-References.
Confidentiality of public records, § 10-7-504.

60-1-506. Application of Administrative Procedures Act.

All administrative functions, proceedings and duties of the board relating to this part shall be subject to and conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 1982, ch. 654, § 4.

60-1-507. Supervisor to correct problems upon failure of owner, operator or surety.

Whenever the supervisor has determined that an owner or operator has failed or neglected to drill, case, operate, repair or plug a mineral test hole in accordance with this part or the rules or orders adopted hereunder, notice of the determination shall be given to the owner or operator and to the surety executing the bond filed by such owner or operator, along with an order to correct the problem. If the owner or operator, or surety, fails to correct the specified conditions in accordance with the rule or order of the supervisor within sixty (60) days after service of notice, the supervisor may enter into or upon any private or public property on which the well is located, and across any private or public property to reach the mineral test hole, and repair or

correct the specified condition, and the owner, operator and surety shall be jointly and severally liable for all expenses incurred. The supervisor shall certify to the owner, operator and surety the claim of the state, listing therein the items of expense in making the repair or correction. The claims shall be paid by the owner or operator, or surety, within thirty (30) days, and, if not paid within that time, the supervisor may bring suit in the circuit or chancery court against the owner, operator and surety, jointly and severally, for the collection.

History.
Acts 1982, ch. 654, § 4.

60-1-508. Actions prohibited.

It is unlawful for any person to:

(1) Violate any of this part or any rule or order of the supervisor or board;

(2) Make false entry or statement in any required report or record;

(3) Omit or cause to be omitted from any required report or record full, true and correct entries as required by this part;

(4) Fail in providing, within a reasonable time, a copy of any report or record requested by the supervisor; and

(5) Cause surface or subsurface pollution in the drilling, operation, or plugging of mineral test holes subject to this part.

History.
Acts 1982, ch. 654, § 4.

60-1-509. Civil and criminal penalties.

(a) Any person or operator who violates any of this part or regulations adopted pursuant thereto, or who fails to perform the duties imposed by these provisions or who fails or refuses to obtain a permit as provided herein, or who violates any determination or order promulgated pursuant to this part is liable to a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each day during which such violation continues, and, in addition, may be enjoined from continuing such violation as hereinafter provided. The penalties shall be assessed and subject to appeal in accordance with § 60-1-401.

(b) It shall be the duty of the district attorneys general in the various judicial districts throughout the state, or the attorney general and reporter, upon the request of the supervisor, to bring an action for the recovery of the penalties herein provided for and to bring an action for a restraining order, temporary or permanent injunction, against any operator or other person violating or threatening to violate any of this part or violating or threatening to violate any order or determination promulgated pursuant to this part.

(c) Any person who willfully and knowingly falsifies any records, information, plans, specifications, or other data required by the board or the supervisor or who willfully fails, neglects, or refuses to comply with any of this part is guilty of a Class C misdemeanor; provided, that no process by warrant, presentment or indictment shall be issued except upon application of the board or commissioner or such application for process authorized by them.

(d) Nothing in this part shall abrogate the right of any person who is

materially or personally damaged or injured by the drilling of a mineral test hole to seek remedies against the responsible person in the courts.

History.
Acts 1982, ch. 654, § 4; 1989, ch. 591, § 113; 2007, ch. 362, § 13.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

60-1-510. Injunctions.

(a) When there is reason to believe that a person is violating or is about to violate or has violated any of this part or any permits or orders issued thereunder, the supervisor may institute proceedings in the chancery court of the county in which the alleged violation occurred for injunctive relief to prevent continuance of such action or to correct the conditions resulting in or about to result therefrom, or both. The court shall grant the injunction without the necessity of showing a lack of adequate remedy at law upon a showing by the supervisor that such person is violating or is about to violate or has violated one (1) or more of the permanent or temporary injunctions, prohibitory or mandatory, and restraining orders.

(b) The supervisor may bring suit for injunctive enforcement of any order made by the supervisor when such order has become final as a result of any person's failure to appeal to the board, and such person has failed to comply with the order. In such suits all findings of fact contained in the order and complaint shall be deemed to be final, and not subject to review except as to receipt of notice of the order, but the defendant may proffer evidence showing that the defendant has in fact complied with the supervisor's order. The order made by the supervisor in such cases shall be prima facie reasonable and valid, and it shall be presumed that the supervisor has complied with all requirements of the law. The board may likewise bring suit for enforcement of any order made by it, which has become final either by failure of any person to appeal the board's order or by an appellate court's decision against any person who fails to comply with such final order. In such suits, the board's decision shall not be subject to challenge as to matters of law or fact, but the violator may proffer evidence showing that the violator has in fact complied with the board's order.

(c) Any suit for an injunction brought by the supervisor shall be filed in the chancery court of the county in which all or a part of the violation is or is about to occur, in the name of the department, by the district attorney general at the direction of the supervisor or the board and under the supervision of the attorney general and reporter. Such proceedings shall not be tried by jury. Appeals from judgments or decrees of the chancery court in proceedings brought under this part shall lie to the supreme court despite the fact that controverted questions of fact may be involved.

History.
Acts 1982, ch. 654, § 4.

60-1-511. Part supplemental.

This part shall not operate to repeal or affect any of the laws of the state relating to the pollution of the air or waters thereof, or any conservation or

mining laws, but shall be held and construed as ancillary and supplemental thereto.

History.
Acts 1982, ch. 654, § 4.

PART 6

OIL AND GAS SURFACE OWNERS COMPENSATION

60-1-601. Short title.

This part shall be known as and may be cited as the "Oil and Gas Surface Owners Compensation Act of 1984."

History.
Acts 1984, ch. 863, § 2.

60-1-602. Purpose.

(a) The general assembly finds that the exploration for and development of oil and gas reserves must coexist with the equal right to the use, agricultural or otherwise, of the surface of land within this state.

(b) It is the purpose of this part to provide constitutionally permissible protection and compensation to surface owners of land on which oil and gas wells are drilled for the burden resulting from such drilling operations. This part shall be interpreted to benefit surface owners regardless of when any particular oil and gas estate was separated from the surface estate and regardless of who executed that document.

History.
Acts 1984, ch. 863, § 2.

60-1-603. Part definitions.

For purposes of this part and unless the context clearly requires otherwise, the terms listed below will have the following meaning:

(1) "Drilling operation" means the actual drilling or redrilling of an oil or gas well and the related preparation of the drilling site and access roads, which requires entry upon the surface estate;

(2) "Oil and gas developer" means the person who acquires the oil and gas estate by any legal means for the purpose of extracting therefrom oil or gas;

(3) "Person" means any natural person, corporation, firm, partnership, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or agency thereof;

(4) "Surface owner" means a person who owns an estate in fee in the surface of land overlying an oil and gas estate being developed, either solely or as a co-owner.

History.
Acts 1984, ch. 863, § 2.

60-1-604. Compensation of surface owners for drilling operations.

The oil and gas developer shall be obligated to pay the surface owner for:

(1) Lost income or expenses incurred as a result of being unable to dedicate land actually occupied by the driller's operation or to which access is prevented by such drilling operation to the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained, measured from the date the operator enters upon the land;

(2) The market value of crops destroyed, damaged or prevented from reaching market;

(3) Any damage to a water supply in use prior to the commencement of the permitted activity;

(4) The cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality; and

(5) The diminution in value, if any, of the surface lands and other property after completion of the surface disturbance done pursuant to the activity for which the permit was issued, determined according to the actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity.

History.
Acts 1984, ch. 863, § 2.

60-1-605. Notice of claim.

Any surface owner, to receive compensation under this part shall notify by certified mail, return receipt requested, the oil and gas developer of the damages sustained by the person within three (3) years after the injury occurs.

History.
Acts 1984, ch. 863, § 2.

60-1-606. Response to persons seeking compensation.

Within sixty (60) days after the oil and gas developer receives notice of damages, the oil and gas developer shall make a written response to the person seeking compensation for the damages.

History.
Acts 1984, ch. 863, § 2.

60-1-607. Arbitration.

(a) If the person seeking compensation receives a written rejection, rejects any counter-offer of the oil and gas developer, or receives no reply, that person may bring an action for compensation in a court of proper jurisdiction or the parties may elect to proceed by arbitration as provided herein. If the amount of compensation awarded by arbitration or the court is greater than that which had been offered by the oil and gas developer, the person seeking compensation shall also be awarded reasonable attorney fees, costs of expert witnesses, any other costs which may be legally assessed, and interest on the amount of the final compensation awarded from the day drilling was commenced.

(b) The person seeking compensation, in place of bringing an action in court, can request of the oil and gas developer in writing by certified mail, return receipt requested, that compensation be determined by binding arbitration. If the oil and gas developer agrees to binding arbitration, the developer shall notify the person seeking compensation of consent to arbitration in writing within fifteen (15) days of receiving the request.

(c)(1) In the event of binding arbitration, compensation to be awarded the surface owner shall be determined by a disinterested arbitrator chosen by the surface owner and the oil and gas developer from a list of arbitrators approved by the American Arbitration Association.

(2) Such hearings shall be conducted as provided in title 29, chapter 5, part 3.

(d) Each party shall pay one-half (½) the compensation due the arbitrator.

History.
Acts 1984, ch. 863, § 2.

60-1-608. Common law remedies preserved.

Nothing in this part shall be construed to diminish in any way the common law remedies, including damages, of a surface owner or any other person against the oil and gas developer for the unreasonable, negligent or otherwise wrongful exercise of the contractual right, whether express or implied, to use the surface of the land for the benefit of the developer's interest.

History.
Acts 1984, ch. 863, § 2.

PART 7
ENVIRONMENTAL PROTECTION

60-1-701. Measures by operator at well site.

At the well site, the operator shall take measures to prevent or minimize soil erosion and pollution of surface waters during the life of the operation. Such measures shall include sediment ponds, berms, diversion ditches, hay bales, and other measures designed to prevent erosion and discharge of pollutants from the well site.

History.
Acts 1987, ch. 257, § 3.

Law Reviews.
Into the Fracking Fray: A Balanced Approach to Regulating Hydraulic Fracturing in Tennessee, 44 U. Mem. L. Rev. 667 (2014).

60-1-702. Access roads.

(a) Access roads shall be constructed in such a manner as to reduce erosion to a practical minimum.

(b) Any regulations promulgated pursuant to this part concerning access roads shall be guidelines only and shall not be mandatory.

History.
Acts 1987, ch. 257, §§ 3, 7.

60-1-703. Manner of accomplishing reclamation of disturbed areas.

Reclamation of all disturbed areas shall be accomplished in the following manner:

(1) The vegetative cover must be diverse, effective, and permanent. It must be capable of long-term stabilization of the soil and must not impede natural vegetative succession or interfere with surrounding vegetative cover;

(2) The permanent reclamation plant species must be capable of self-regeneration and must have the same seasonal characteristics of growth as the original vegetation. A different plant species not having these characteristics may be used to establish a quick-growing, temporary cover to stabilize the disturbed area;

(3) Suitable mulch and soil nutrients shall be applied where necessary to stabilize a regraded area and to establish the vegetative cover;

(4) Except for active work areas, a temporary vegetative cover shall be planted on all disturbed areas within thirty (30) days of the initial disturbance;

(5) Within thirty (30) days of the plugging of a well, the permanent vegetative cover shall be planted on all disturbed areas;

(6) Access roads are subject to all the above reclamation requirements unless the landowner establishes by sworn affidavit that a road will continue to be used for other legitimate purposes and maintained in usable condition, which condition reduces erosion to a practical minimum, by the surface owner. An access road may continue to be used by the operator to gain access to the well site in order to determine the adequacy of the vegetation cover or to perform additional revegetation;

(7) Revegetation success shall not be determined until after two (2) successfully completed growing seasons have occurred; and

(8) Revegetation shall be considered successful if a ground cover of at least ninety percent (90%) herbaceous and/or woody species is achieved, so long as at least eighty percent (80%) are perennial species.

History.
Acts 1987, ch. 257, § 3.

60-1-704. Release of reclamation bond.

(a) Upon satisfactory completion of regrading and revegetation of all disturbed areas except active work areas and access roads needed for oil or gas production, the supervisor shall release one third (⅓) of the reclamation bond. After plugging, and upon final reclamation and satisfactory survival of the vegetation through two (2) growing seasons, the supervisor shall release the remainder of the reclamation bond.

(b) For the purposes of this section, "active work area" means that portion of the initially disturbed area necessary for production-related equipment, materials and facilities, as determined by the supervisor.

History.
Acts 1987, ch. 257, § 3; 1989, ch. 352, § 1.

60-1-705. Failure to perform — Forfeiture of bond — Securing performance.

Upon failure of any operator to perform site protection or reclamation activities, as required by this chapter, and notice of default, if the default is not cured within a reasonable time by the operator or the surety, if any, on the operator's bond, the board shall declare the bond forfeited, collect the bond and use the proceeds for the required site protection or reclamation work. The supervisor may contract with any person or public agency to perform the reclamation work. Any portion of the bond not thus expended shall be refunded to the operator or the operator's surety if the conditions of the bond are fully satisfied. If the conditions of the bond are not fully satisfied, because the bond is a blanket bond or otherwise, the unexpended proceeds shall be held or applied in a manner to secure the performance of the remaining obligations secured by the bond. If the bond is a blanket bond and the unexpended portion is less than is required for the remaining wells covered by the bond, a supplementary bond shall be required.

History.
Acts 1987, ch. 257, § 3.

CHAPTER 2

INTERSTATE OIL AND GAS COMPACT [REPEALED]

Section
60-2-101 — 60-2-107. [Repealed.]

60-2-101— 60-2-107. [Repealed.]

Compiler's Notes.
Former chapter 2, §§ 60-2-101 — 60-2-107 (Acts 1947, ch. 44, §§ 1-7; modified; 1976, ch. 806, § 1 (64); T.C.A. (orig. ed.), §§ 60-301 — 60-307), concerning the interstate oil and gas compact, was repealed by Acts 1982, ch. 582, § 3.

CHAPTER 3

INSPECTION OF VOLATILE OILS

Section
60-3-101. Short title.
60-3-102. Chapter definitions.
60-3-103. Minimum standards — Penalty for violation.
60-3-104. Oils and substances subject to inspection.
60-3-105. Examination and testing — Records regarding transportation of substances — Rules and regulations.
60-3-106. Marking of receptacles, tanks and pumps — Unlawful removal of notices or placards.
60-3-107. Marking of gross weight — Fluids having no proper test.
60-3-108. Unlawful alteration of markings.
60-3-109. Identification and disposition of condemned oils or substances.
60-3-110. Inspection of oils held for export.
60-3-111. Records of inspectors — Daily reports — Locking and sealing valves — Unlawful breaking of locks or seals.

Section
60-3-112. Storage, unloading, or sale before inspection.
60-3-113. Prohibited acts.
60-3-114. Report and prosecution of violation — Disposition of fine.
60-3-115. Alternative testing standard to American Petroleum Institute scale — Penalty for furnishing calibration tables on storage tanks.

60-3-101. Short title.

This chapter may be cited and referred to as the "Inspection of Volatile Oils Law."

History.
Acts 1978, ch. 761, § 1; T.C.A., § 67-3201.

Law Reviews.
Preferences, Priorities, and Powers of the State in the Collection of Delinquent Revenue: Tennessee's Tax Enforcement Procedures Act (Donald J. Serkin), 8 Mem. St. U.L. Rev. 707.

60-3-102. Chapter definitions.

As used in this chapter, the following words and phrases shall have the meanings ascribed herein unless the context in which used dictates otherwise:

(1) "Commissioner" means the commissioner of revenue, or the commissioner's authorized delegate;

(2) "Department" means the department of revenue;

(3) "Inspector" means an employee of the petroleum tax division of the department who is designated as such; and

(4) "Oil or substance" means any oil or substance described in §§ 60-3-103 and 60-3-104.

History.
Acts 1978, ch. 761, § 2; T.C.A., § 67-3202.

60-3-103. Minimum standards — Penalty for violation.

(a) It is unlawful for any person to sell or offer for sale, or to bring to rest in Tennessee for consumption, storage, sale or use, any ethanol, methanol, benzol, gasoline, burning oil, distillate, fuel oil, gas oil, kerosene, naphtha, or substitutes for any of these by whatever trade name known, reflecting a gravity of sixteen degrees (16°) or above on the American Petroleum Institute scale or a lower standard of quality than the minimum specifications for the substances published from time to time by the United States government or other recognized authority.

(b) It is unlawful for any person or persons to distill, manufacture, or otherwise produce ethyl alcohol, methane alcohol, or other liquids to be used as a fuel or to be blended as a fuel for combustion engines or heating oil systems without denaturing such liquid no later than immediately following the distilling process by providing for flow of the liquid from the condensing apparatus into a container containing a quantity of the denaturing agent.

(c) It is unlawful to distribute to any manufacturer, wholesaler, or retailer in this state ethyl alcohol, methane alcohol, or other liquids to be blended as a fuel for combustion engines or heating oil systems, in any container of fifty-five gallons (55 gals.) or less, unless such container is prominently labelled with the words "POISON: UNSAFE FOR HUMAN CONSUMPTION".

(d) The denaturing agent used shall be determined by the commissioner or the commissioner's designated agent.

(e) Each separate violation of a provision of this section is a Class C misdemeanor.

History.
Acts 1978, ch. 761, § 3; 1980, ch. 786, § 4; 1983, ch. 144, §§ 1, 2; T.C.A., § 67-3203; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

60-3-104. Oils and substances subject to inspection.

(a) All ethanol, methanol, benzol, gasoline, burning oil, distillate, fuel oil, gas oil, kerosene, naphtha, or any other volatile substances, reflecting a gravity of sixteen degrees (16°) or above on the American Petroleum Institute scale, with the exception of those substances with a kinematic viscosity greater than seventy (70) centistokes at one hundred twenty-two degrees Fahrenheit (122° F) and a flash point greater than one hundred fifty degrees Fahrenheit (150° F), produced from petroleum, natural gas, oil shales or coal, by whatever trade name known, or substitutes therefor, or any other petroleum substances used as a substitute for or in the place of any of the substances herein enumerated sold or used or stored in this state, separately or in combination for any purpose whatever, by any user or storer, whether manufactured in this state or not, shall be subject to inspection under the general supervision of the commissioner before being sold or offered for sale or used or stored in this state.

(b) Oils and substances subject to inspection as provided in subsection (a) may be inspected in transit while in the hands of the carrier, forwarding agent, or warehouseman. It is unlawful for any carrier, forwarding agent or warehouseman to unload or store any of the oils or substances before having the same inspected as provided in this section.

History.
Acts 1978, ch. 761, § 4; 1980, ch. 786, § 5; T.C.A., § 67-3204.

60-3-105. Examination and testing — Records regarding transportation of substances — Rules and regulations.

(a) The commissioner is authorized to examine and test, within this state, all oils and substances before the same are sold, offered for sale, used or stored in this state.

(b) It is the duty of all persons handling, transporting or storing oils or substances within this state to retain records or intelligible memoranda or books subject to inspection by an inspector covering the movements of the oils or substances in this state. The records shall be retained for a period of three (3) years following the end of the year in which the records were originated.

(c) The commissioner is authorized to examine and test all oils and substances for which there is a duty imposed upon the commissioner under this chapter, and also any products submitted to the commissioner, to determine

whether the minimum standards imposed by § 60-3-103 are met and also to determine the value of such products for the purpose claimed.

(d) The commissioner shall make and publish rules necessary to effectuate an efficient and uniform system of inspection of oils and substances.

(e) The commissioner may prescribe standard minimum specifications for oils and substances and may promulgate rules for the uniform inspection of them. All tests shall conform to and be made under conditions and rules adopted by American Society for Testing Materials.

(f) The gravity, purity and test of oils and substances shall be determined in the manner and under the regulations as the commissioner may specify.

(g) The commissioner may purchase the apparatus for making chemical and physical tests of oils and substances, and may make any tests as are called for by this chapter, or as, in the judgment of the commissioner, are deemed essential for better enforcement and to afford full protection to the public.

History.
Acts 1978, ch. 761, § 5; T.C.A., § 67-3205.

60-3-106. Marking of receptacles, tanks and pumps — Unlawful removal of notices or placards.

(a) After making any examination and test, the commissioner may affix to the receptacle, tank, pump, or other container, containing oils or substances inspected, such identification or caution notices as the commissioner may designate. It is unlawful for any person to remove the identification or caution notice without authorization of the commissioner.

(b) When any receptacle, tank, pump or other container is found by the commissioner to contain any oil or substance that does not meet the minimum specifications, it shall be the commissioner's duty to attach and seal thereto a placard bearing in bold letters a description of the substance and a warning that it is condemned and does not meet Tennessee specifications. It is unlawful for any person to remove, obscure or deface any condemnation placard described herein without the written consent of the commissioner, or in any manner to interfere with or obstruct the commissioner in the discharge of any of the commissioner's duties under this chapter.

(c) A violation of this section is a Class C misdemeanor.

History.
Acts 1978, ch. 761, § 6; T.C.A., § 67-3206; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

60-3-107. Marking of gross weight — Fluids having no proper test.

If weight shall be established for the purpose of ascertaining quantity, instead of gauging by gallons, then the inspector shall mark on the container inspected by the inspector the gross weight instead of gallons. In addition, the inspector shall affix the inspector's brand on all containers or packages found by the inspector to contain fluids that have no proper test with the words "highly inflammable," or with other words which properly reflect the conditions as found by the inspector.

History.
Acts 1978, ch. 761, § 7; T.C.A., § 67-3207.

60-3-108. Unlawful alteration of markings.

(a) It is unlawful for any manufacturer or dealer of oils or substances, with intent to deceive or defraud, to alter or erase the inspector's brand, to indicate a different test, gravity, purity or quantity than is found by the inspector, or to use with such intent any container or package having any inspector's brand thereon, without having the contents actually inspected.

(b) A violation of this section is a Class C misdemeanor.

History.
Acts 1978, ch. 761, § 8; T.C.A., § 67-3208; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

60-3-109. Identification and disposition of condemned oils or substances.

Where any shipment of oils or substances is sent from another state for consumption in this state, and the same, upon inspection by an inspector, is found to be of less test than required or is otherwise indicated to be either unsafe for use or of a lower standard of quality than the minimum specifications for the oil or substance, as published by the commissioner, the commissioner is authorized to condemn the oils or substances, to mark or otherwise indicate the shipment is rejected for use in this state, and to order that the rejected oils or substances be shipped back to the shippers of the same.

History.
Acts 1978, ch. 761, § 9; T.C.A., § 67-3209.

60-3-110. Inspection of oils held for export.

Whenever any oil or substance is stored in this state, or has come to rest after shipment in interstate commerce and is stored in this state, and such oil or substance is subsequently exported to a point outside this state, it shall be subject to inspection under this part.

History.
Acts 1978, ch. 761, § 10; T.C.A., § 67-3210.

60-3-111. Records of inspectors — Daily reports — Locking and sealing valves — Unlawful breaking of locks or seals.

(a) Inspectors shall keep an accurate record of all oils and substances inspected, rejected, or certified to by them, which record shall state the date of the inspection, the number of gallons approved, the number rejected, if any, the name of the person for whom inspected, and the name and address of the person to whom consigned.

(b) Inspectors are authorized to lock and seal any or all valves at bulk plants or river terminals; and in no case shall any lock or seal which has been affixed by an inspector to a valve be opened except in the presence of an inspector.

(c)(1) It is unlawful for any person to break a lock or seal in violation of this

section.

(2) A violation of this subsection (c) is a Class C misdemeanor.

History.
Acts 1978, ch. 761, § 11; T.C.A., § 67-3211; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

60-3-112. Storage, unloading, or sale before inspection.

(a) If any person, manufacturer or dealer shall store, unload or sell to any person in the state any oil or substance before having the same inspected, as provided in this chapter, the oil or substance stored, unloaded or sold shall be subject to the gasoline tax, which tax shall be collected in the same manner as now provided by law for the collection of the gasoline tax.

(b) Any of the oils or substances found to be rejected may be forfeited and sold, and the proceeds shall go to the common school fund of the state.

History.
Acts 1978, ch. 761, § 12; T.C.A., § 67-3212.

60-3-113. Prohibited acts.

(a) It is unlawful for any dealer, distributor or manufacturer of oils or substances to refuse to admit an inspector upon the dealer's, distributor's or manufacturer's premises, to such extent as it may be necessary for the performance of the inspector's duties, or to obstruct an inspector in the discharge of the inspector's duties.

(b) It is unlawful for any person to mix, for sale, naphtha and other such oils or substances or same with any corrosive substance, or to knowingly sell, or keep for sale, or offer for sale, the mixture, or to sell, or offer for sale any products which are not of required test.

(c) It is unlawful for any person to violate any of the other provisions of this part with the intent of obstructing the commissioner or delegate in the performance of the commissioner's or delegate's duties under this chapter.

(d) A violation of this section is a Class C misdemeanor.

History.
Acts 1978, ch. 761, § 13; T.C.A., § 67-3213; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

60-3-114. Report and prosecution of violation — Disposition of fine.

(a) It is the duty of any inspector, or any other person having cognizance of any violation of this chapter, to make complaint forthwith against the person so offending to the district attorney for the county in which the offense is alleged to have been committed.

(b) It is the duty of the district attorney to represent and prosecute, on behalf of the state, all cases of offense arising under this chapter and within any county under the district attorney's jurisdiction.

(c) All prosecutions for fines and penalties under the criminal provisions of this chapter shall be by indictment or presentment and when collected shall be

paid over to the state treasurer, one fourth (¼) of which shall be paid to the informer, and three fourths (¾) placed into the general fund.

History.
Acts 1978, ch. 761, § 14; T.C.A., § 67-3214.

60-3-115. Alternative testing standard to American Petroleum Institute scale — Penalty for furnishing calibration tables on storage tanks.

(a) If the commissioner finds that the American Petroleum Institute scale standard is impractical or outdated for purposes of testing volatile oils and substances, the commissioner may by rule provide for an alternative testing standard to that set out in §§ 60-3-103 and 60-3-104. The alternative standard must conform to and be made under the conditions and rules adopted by the American Society for Testing Materials and shall be promulgated as a rule in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) It is a Class C misdemeanor to furnish calibration tables on storage tanks.

History.
Acts 1978, ch. 761, § 15; T.C.A., § 67-3215; Acts 1989, ch. 591, § 113.

Cross-References.
Penalty for Class C misdemeanor, § 40-35-111.

CHAPTER 4

PRODUCTION OF FUEL ALCOHOL

Section
60-4-101. Licensing of fuel alcohol producers.
60-4-102. Taxation of fuel alcohol — Rules and regulations concerning use and production.

60-4-101. Licensing of fuel alcohol producers.

(a) Except as provided by subsection (c), in this state every producer of fuel alcohol as defined in § 67-3-602 [repealed], shall be licensed annually by the department of revenue on forms approved by the commissioner.

(b) Every producer of fuel alcohol shall be subjected to the following annual license fee:

(1) Production of one thousand gallons (1,000 gals.) up to two thousand and five hundred gallons (2,500 gals.) annually shall require a fifty dollar ($50.00) licensing fee; and

(2) Production of over two thousand and five hundred gallons (2,500 gals.) of fuel alcohol annually shall require a one hundred dollar ($100) licensing fee.

(c) Production of up to one thousand gallons (1,000 gals.) of fuel alcohol annually shall require no license fee. However, anyone producing less than one thousand gallons (1,000 gals.) per year shall be required to notify the department in writing of any intention to produce fuel alcohol before such production occurs.

(d) All fees shall be collected by the commissioner or the commissioner's

designated agent; all license application and fee information shall be accessible to the alcoholic beverage commission in such form and manner as prescribed by the commissioner.

(e) It is unlawful for any producer to fail to comply with subsections (a)-(c), and any person found guilty of doing so shall be punished by a fine of not less than fifty dollars ($50.00) and not more than the maximum fine provided under the general law for the commission of a misdemeanor.

(f) The commissioner shall have the authority to establish rules and regulations relating to the licensing of producers of fuel alcohol.

History.
Acts 1980, ch. 786, § 7; T.C.A., § 67-39-101.

Compiler's Notes.
The misdemeanor penalty provisions in this section may have been affected by the Criminal Sentencing Reform Act of 1989. See §§ 39-11-114, 40-35-110, 40-35-111.

Section 67-3-602, referred to in this section, was repealed by Acts 1997, ch. 316, § 1.

60-4-102. Taxation of fuel alcohol — Rules and regulations concerning use and production.

(a) Chapter 3 of this title and former title 67, chapter 3, parts 1-9 [repealed] shall apply to fuel alcohol. A person producing fuel alcohol for personal use in combustion engines or heating oil systems shall not be considered a distributor or a dealer within the meaning of chapter 3 of this title and former title 67, chapter 3, parts 1-9 [repealed]. If a person sells fuel alcohol, such person shall be deemed a distributor unless the fuel alcohol is sold to a bonded distributor or its lawful agents who must assume reporting and payment of all taxes due on such fuel alcohol.

(b) The commissioner shall have the authority to establish rules and regulations concerning the use and production of fuel alcohol, for the administration of subsection (a).

History.
Acts 1980, ch. 786, § 8; T.C.A., § 67-39-102.

Compiler's Notes.
Former title 67, ch. 3, parts 1-9, referred to in this section, were repealed by Acts 1997, ch. 316, § 1.

Cross-References.
Restrictions on credit sales of gasohol prohibited, § 47-25-625.

Restrictions on dealer's supplying gasohol prohibited, § 47-25-626.

TITLE 61

PARTNERSHIPS

Chapter
1. Revised Uniform Partnership Act.
2. Revised Uniform Limited Partnership Act.
3. Tennessee Uniform Limited Partnership Act of 2017.

CHAPTER 1

REVISED UNIFORM PARTNERSHIP ACT

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61-1-404. General standards of partner's conduct.
61-1-405. Actions by partnership and partners.
61-1-406. Continuation of partnership beyond definite term or particular undertaking.
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61-1-501. Partner not a co-owner of partnership property.
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Part 6. Partner's Dissociation

61-1-601. Events causing partner's dissociation.
61-1-602. Partner's power to dissociate — Wrongful dissociation.

Section
61-1-603. Effect of partner's dissociation.

Part 7. Partner's Dissociation When Business Not Wound Up

61-1-701. Purchase of dissociated partner's interest.
61-1-702. Dissociated partner's power to bind and liability to partnership.
61-1-703. Dissociated partner's liability to other persons.
61-1-704. Statement of dissociation.
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Part 8. Winding Up Partnership Business

61-1-801. Events causing dissolution and winding up of partnership business.
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61-1-901. Definitions.
61-1-902. Conversion of partnership to limited partnership.
61-1-903. Conversion of limited partnership to partnership.
61-1-904. Effect of conversion.
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Part 10. Limited Liability Partnership

61-1-1001. Application process — Registered limited liability partnership.
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61-1-1206. Applicability.
61-1-1207. Savings clause.
61-1-1208. Filing fees.

PART 1

GENERAL PROVISIONS

61-1-101. Chapter definitions.

As used in this chapter:

(1) "Business" means every trade, occupation, and profession and any other activity, including the holding or ownership of property, entered into for profit;

(2) "Confirmation of good standing" means confirmation by the commis-

sioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that at the time such confirmation is issued a limited liability partnership or a foreign limited liability partnership is current on all taxes and penalties to the satisfaction of the commissioner;

(3) "Debtor in bankruptcy" means a person who is the subject of:

(A) An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or

(B) A comparable order under federal, state, or foreign law governing insolvency;

(4) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee;

(5) "Foreign limited liability partnership," "foreign registered limited liability partnership" or a limited liability partnership or registered limited liability partnership that is designated as "foreign" means a partnership that:

(A) Is formed under the laws of any jurisdiction other than the state of Tennessee; and

(B) Has the status of a limited liability partnership under those laws;

(6) "Limited liability partnership," "registered limited liability partnership" or a limited liability partnership or registered limited liability partnership that is designated as "domestic" means a partnership that has filed an application for registration as a registered limited liability partnership under § 61-1-1001 and does not have a similar statement in effect in any other jurisdiction;

(7) "Partnership" means an association of two (2) or more persons to carry on as co-owners of a business or other undertaking for profit formed under § 61-1-202, predecessor law, or comparable law of another jurisdiction;

(8) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement;

(9) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking;

(10) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights;

(11) "Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership (whether general or limited), association, joint venture, government, governmental subdivision, agency, or instrumentality, custodian, nominee or any other individual or entity in its own or any representative capacity, or any other legal or commercial entity;

(12) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein;

(13) "Secretary of state" means the secretary of state of Tennessee;

(14) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession

subject to the jurisdiction of the United States;

(15) "Statement" means a statement of partnership authority under § 61-1-303, a statement of denial under § 61-1-304, a statement of dissociation under § 61-1-704, a statement of dissolution under § 61-1-805, a statement of merger under § 61-1-907, or an amendment or cancellation of any of the foregoing;

(16) "Tax clearance for termination or withdrawal" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that a limited liability partnership or a foreign limited liability partnership has filed all applicable reports, including, but not limited to, a final report, and has paid all fees, penalties and taxes as required by the revenue laws of this state; and

(17) "Transfer" means an assignment, conveyance, lease, mortgage, deed, and encumbrance.

History.

Acts 2001, ch. 353; 2010, ch. 741, § 48; 2010, ch. 742, §§ 8, 9.

Compiler's Notes.

Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2-43; Shan., §§ 3141b2-3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53-3118a93; Acts 1927, ch. 34, §§ 1-3; Code 1932, §§ 7841-7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A. (orig. ed.), §§ 61-101 — 61-142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1-10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

The federal bankruptcy act is compiled in 11 U.S.C.

Cross-References.

Test for insolvency of partnership, § 66-3-303.

Textbooks.

Gibson's Suits in Chancery (7th ed., Inman), § 412.

Tennessee Forms (Robinson, Ramsey and Harwell), Nos. 6-101 — 6-104.

Tennessee Jurisprudence, 20 Tenn. Juris., Partnership, §§ 1-3.

Law Reviews.

An Exegesis of the Ejectment Statutes of Tennessee (R.D. Cox), 18 Mem. St. U.L. Rev. 581 (1988).

Comments, Partnership — Bass v. Bass: Implied Partnership Between Nonmarried Cohabitants, 22 Mem. St. U.L. Rev. 391 (1992).

Removal of General Partners: A Method of Intrapartnership Dispute Resolution for Limited Partnerships (Janet L. Eifert), 39 Vand. L. Rev. 1407 (1986).

Shareholder Oppression in Close Corporations: The Unanswered Question on Perspective, 53 Vand. L. Rev. 749 (2000).

The Revised Uniform Partnership Act in Tennessee (Richard Spore), 37 No. 8 Tenn. B.J. 30 (2001).

NOTES TO DECISIONS

Analysis

1. "Partnership."
2. Evidence of Partnership.

1. "Partnership."

Granting a motion to dismiss for failure to state a claim was not error in a partnership liability action against an owner based on the death of a young woman who purchased illegal drugs and alcohol at the owner's residence, because a co-owner's use of the house for the sale of illegal drugs and alcohol was not for the purpose of or in the furtherance of a partnership with another co-owner. Concklin v. Holland, 138 S.W.3d 215, 2003 Tenn. App. LEXIS 934 (Tenn. Ct. App. 2003), appeal denied, — S.W.3d —, 2004 Tenn. LEXIS 515 (Tenn. June 1, 2004).

It was undisputed in the record that the parties' relationship constituted a partnership, as defined in T.C.A. § 61-1-101, and, as such, the trial court correctly applied the Tennessee Uniform Partnership Act, T.C.A. § 61-1-101 et seq. Because the undisputed proof indicated that the contractor left the project before it was completed, a preponderance of the evidence supported the trial court's finding that the contractor breached the partnership agreement and wrongfully dissociated from the partnership pursuant to T.C.A. § 61-1-601 and T.C.A. § 61-1-602(b). Moran v. Willensky, 339 S.W.3d 651, 2010 Tenn. App. LEXIS 80 (Tenn. Ct. App.

Feb. 2, 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 855 (Tenn. Sept. 1, 2010).

The fact that a father informed the father's daughter that the children had an "interest" in an alleged partnership was insufficient to form a partnership. Tanner v. Whiteco, L.P., 337 S.W.3d 792, 2010 Tenn. App. LEXIS 337 (Tenn. Ct. App. May 17, 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 1130 (Tenn. Nov. 18, 2010).

2. Evidence of Partnership.

Court properly found that funds were partnership funds where, contrary to defendant's assertions, simply because a piece of property was titled only in his name did not mean that partnership funds were not used to purchase that property or that it was not partnership property. Any initial investment clearly consisted of partnership assets and defendant could not claim any individual entitlement to the funds. Montgomery v. Montgomery, 181 S.W.3d 720, 2005 Tenn. App. LEXIS 151 (Tenn. Ct. App. 2005), appeal denied, — S.W.3d —, 2005 Tenn. LEXIS 982 (Tenn. Oct. 31, 2005).

Court properly found that a cohabiting couple were equal partners where plaintiff handled the payroll account, paid the bills and signed all of the checks for the business, prepared the 1099's, handled the workers' compensation insurance, filed documents with the IRS including tax returns, handled the book keeping, made the deposits, collected the debts, and placed orders and handled the invoices. The court also found that plaintiff never received any wages or a salary for her work in the masonry business. Montgomery v. Montgomery, 181 S.W.3d 720, 2005 Tenn. App. LEXIS 151 (Tenn. Ct. App. 2005), appeal denied, — S.W.3d —, 2005 Tenn. LEXIS 982 (Tenn. Oct. 31, 2005).

Dismissal of the decedent's daughter's ex-husband's and grandchildren's action against the decedent's sole surviving child to invalidate the decedent's will was appropriate pursuant to T.C.A. § 61-1-101 because the ex-husband testified that he converted a corporation to a sole proprietorship, and that he owned all of it, and there was also no evidence that the decedent participated in any business decisions; thus, there was nothing sufficient to establish an implied partnership between the decedent and her daughter's ex-husband or that the decedent's assets were assets of any partnership. In re Estate of Price, 273 S.W.3d 113, 2008 Tenn. App. LEXIS 163 (Tenn. Ct. App. Mar. 24, 2008), appeal denied, In re Estate of Price v. Price, — S.W.3d —, 2008 Tenn. LEXIS 739 (Tenn. Sept. 29, 2008).

Plaintiff corporation's motion to strike defendant's affirmative defense of breach of fiduciary duty was granted because even if the court concluded that the corporation's sole member had a fiduciary duty to defendant, that duty would not be shared by the corporation. Because the facts alleged did not show that the corporation and defendant shared money, assets, labor, or skill, there was no basis for concluding that the corporation had a fiduciary duty to defendant; even if the court found a duty, a breach of that duty would not necessarily relieve defendant of liability under promissory notes and therefore would not constitute an affirmative defense. Starnes Family Office, LLC v. McCullar, 765 F. Supp. 2d 1036, 2011 U.S. Dist. LEXIS 9310 (W.D. Tenn. Jan. 28, 2011).

Contractor's spouse was not liable in the spouse's individual capacity for construction defects when home buyers obtained a judgment against a construction company for breach of contract and against the estate of the contractor and the contractor's construction company for breach of implied warranty of workmanship because there was not a written partnership agreement and the contractor's spouse was not made an express partner or an implied partner through the spouse's involvement in the transaction. Webster v. Estate of Dorris, — S.W.3d —, 2016 Tenn. App. LEXIS 81 (Tenn. Ct. App. Feb. 4, 2016).

61-1-102. Knowledge and notice.

(a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

(1) Knows of it;

(2) Has received a notification of it; or

(3) Has reason to know it exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification to another by taking steps reasonably calculated to inform the other person in ordinary course of business, whether or not the other person learns of it.

(d) A person receives a notification when the notification:

(1) Comes to the person's attention; or

(2) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in subsection (f), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if such person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, but is not effective as such if the partner committed or consented to a fraud on the partnership.

History.
Acts 2001, ch. 353.

Compiler's Notes.
Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2-43; Shan., §§ 3141b2-3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53-3118a93; Acts 1927, ch. 34, §§ 1-3; Code 1932, §§ 7841-7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A. (orig. ed.), §§ 61-101—61-142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1-10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

61-1-103. Effect of partnership agreement — Nonwaivable provisions.

(a) Except as otherwise provided in subsection (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) Vary the rights and duties under § 61-1-105 except to eliminate the duty to provide copies of statements to all of the partners;

(2) Unreasonably restrict the right of access to books and records under § 61-1-403(b);

(3) Eliminate the duty of loyalty under § 61-1-404(b)(1) and (2) or § 61-1-603(b)(3), but:

(A) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(B) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) Unreasonably reduce the duty of care under § 61-1-404(c) or

§ 61-1-603(b)(3);

(5) Eliminate the obligation of good faith and fair dealing under § 61-1-404(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) Vary the power to dissociate as a partner under § 61-1-602(a), except to require the notice under § 61-1-601(1) to be in writing;

(7) Vary the right of a court to expel a partner in the events specified in § 61-1-601(5);

(8) Vary the requirement to wind up the partnership business in cases specified in § 61-1-801(4), (5), or (6); or

(9) Vary the law applicable to a limited liability partnership under § 61-1-106(c).

History.
Acts 2001, ch. 353; 2002, ch. 563, § 2.

Compiler's Notes.
Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2-43; Shan., §§ 3141b2-3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53-3118a93; Acts 1927, ch. 34, §§ 1-3; Code 1932, §§ 7841-7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A. (orig. ed.), §§ 61-101—61-142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1-10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

61-1-104. Supplemental principles of law.

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is the applicable federal rate as determined from time to time by the United States treasury pursuant to 26 U.S.C. § 1274(d) or any successor law.

(c) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

History.
Acts 2001, ch. 353.

Compiler's Notes.
Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2-43; Shan., §§ 3141b2-3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53-3118a93; Acts 1927, ch. 34, §§ 1-3; Code 1932, §§ 7841-7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A. (orig. ed.), §§ 61-101—61-142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1-10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

Law Reviews.
Interpretation of Statutes in Derogation of the Common Law (Jefferson B. Fordham and J. Russell Leach), 3 Vand. L. Rev. 438.

61-1-105. Execution, filing, and recording of statements.

(a) A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

(b) A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office of the register of deeds has the effect provided for recorded statements in this chapter. A recorded statement

that is not a certified copy of a statement filed in the office of the secretary of state does not have the effect provided for recorded statements in this chapter.

(c) A statement filed by a partnership must be executed by at least two (2) partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(d) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

History.
Acts 2001, ch. 353.

Compiler's Notes.
Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2-43; Shan., §§ 3141b2-3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53-3118a93; Acts 1927, ch. 34, §§ 1-3; Code 1932, §§ 7841-7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A. (orig. ed.), §§ 61-101—61-142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1-10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

61-1-106. Governing law.

(a) Except as otherwise provided in subsections (b) and (c), the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(b) Where the partners have provided that the partnership agreement is governed by the laws of a jurisdiction other than this state, the law of the jurisdiction governing the partnership agreement governs relations among the partners and between the partners and the partnership.

(c) The law of this state governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership that has filed an application as a limited liability partnership in this state.

History.
Acts 2001, ch. 353.

Compiler's Notes.
Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2-43; Shan., §§ 3141b2-3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53-3118a93; Acts 1927, ch. 34, §§ 1-3; Code 1932, §§ 7841-7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A. (orig. ed.), §§ 61-101—61-142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1-10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

61-1-107. Partnership subject to amendment or repeal of chapter.

A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

History.
Acts 2001, ch. 353.

Compiler's Notes.
Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2-43; Shan., §§ 3141b2-3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53-3118a93; Acts 1927, ch. 34, §§ 1-3; Code 1932, §§ 7841-7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A. (orig. ed.), §§ 61-101—61-142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1-10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

PART 2

NATURE OF PARTNERSHIP

61-1-201. Partnership as entity.

(a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of an application under former § 61-1-143.

History.
Acts 2001, ch. 353.

61-1-202. Formation of partnership.

(a) Except as otherwise provided in subsection (b), the association of two (2) or more persons to carry on as co-owners of a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

(c) In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(A) Of a debt by installments or otherwise;

(B) For services as an independent contractor or of wages or other compensation to an employee;

(C) Of rent;

(D) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(E) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(F) For the sale of the goodwill of a business or other property by installments or otherwise.

History.
Acts 2001, ch. 353.

Cross-References.
Equity participations, title 47, ch. 24.
Limited partnerships, title 61, ch. 2, part 1.
Presumption of partnership, §§ 24-5-108, 24-5-109.

Textbooks.
Gibson's Suits in Chancery (7th ed., Inman), § 412.
Tennessee Jurisprudence, 20 Tenn. Juris., Partnership, §§ 5-7, 10.

Law Reviews.
Business Associations — 1956 Survey (F. Hodge O'Neal), 9 Vand. L. Rev. 934.
Business Associations — 1963 Tennessee Survey (Robert N. Covington), 17 Vand. L. Rev. 923.
Professional Associations in Tennessee, 29 Tenn. L. Rev. 437.
Some Whys and Wherefores in Drafting Shareholder Agreements (Robert L. McMurray), 23 No. 5 Tenn. B.J. 19 (1987).
The Tennessee Corporation Act and Close Corporations for Profit (James S. Covington, Jr.), 43 Tenn. L. Rev. 183.

NOTES TO DECISIONS

Analysis

1. Creation.
2. Partnership Not Established.
3. Partnership Established.

1. Creation.
Bankruptcy debtor and her husband entered into a business relationship for profit, combining their property, labor, skill, experience, or money, thus forming a partnership, where they combined their property and money into their business, the husband deposited his and the debtor's payroll checks into the business' checking account, and the debtor and husband were the signatories on the business' checking account. Haney v. Copeland (In re Copeland), 291 B.R. 740, 2003 Bankr. LEXIS 274 (Bankr. E.D. Tenn. 2003).

In a will dispute, a trial court erred by treating a poultry business as being operated by joint tenants where the evidence showed that business law should have been applied; the case was remanded for a determination of whether the business was operated as a sole proprietorship or a partnership. In re Estate of Jones, 183 S.W.3d 372, 2005 Tenn. App. LEXIS 445 (Tenn. Ct. App. 2005), appeal denied, — S.W.3d —, 2005 Tenn. LEXIS 1184 (Tenn.2005).

2. Partnership Not Established.
Where buyer failed to present evidence that a seller and a chemical company intended to share profits, it failed to establish a genuine issue of material fact as to whether those parties were engaged in a joint venture or implied partnership. Messer Griesheim Indus. v. Cryotech of Kingsport, Inc., 131 S.W.3d 457, 2003 Tenn. App. LEXIS 483 (Tenn. Ct. App. 2003).

Contractor's spouse was not liable in the spouse's individual capacity for construction defects when home buyers obtained a judgment against a construction company for breach of contract and against the estate of the contractor and the contractor's construction company for breach of implied warranty of workmanship because there was not a written partnership agreement and the contractor's spouse was not made an express partner or an implied partner through the spouse's involvement in the transaction. Webster v. Estate of Dorris, — S.W.3d —, 2016 Tenn. App. LEXIS 81 (Tenn. Ct. App. Feb. 4, 2016).

Broker of a shipment did not have an implied partnership with the delivery driver or the freight company where the labor, skill, and equipment needed to fulfill the brokerage contracts were controlled by the freight company and its drivers, the freight company was only one of several companies that the broker contacted to broker shipments, the only funds exchanged between the broker and the freight company were the pre-negotiated payment the freight company received for its delivery services, and it was the freight company that paid the driver, not the broker. Bowman v. Benouttas, 519 S.W.3d 586, 2016 Tenn. App. LEXIS 668 (Tenn. Ct. App. Sept. 9, 2016), appeal denied, — S.W.3d —, 2017 Tenn. LEXIS 61 (Tenn. Jan. 19, 2017).

3. Partnership Established.
Partnership was formed between a decedent and a business associate pursuant to T.C.A. § 61-1-202 because those men combined their property, labor, skill, experience, and money, and entered into a business relationship for profit; the associate managed a dairy and took care of its daily operation, the bank account was jointly titled, the associate had equal access to the money, the milk checks were made payable to both men and deposited into the joint account, and the herd was registered to both men. Swecker v. Swecker, 360 S.W.3d 422, 2011 Tenn. App. LEXIS 25 (Tenn. Ct. App. Jan. 26, 2011), appeal denied, — S.W.3d —, 2011 Tenn. LEXIS 692 (Tenn. July 14, 2011).

61-1-203. Partnership property.

Property transferred to or otherwise acquired by a partnership is property of the partnership and not of the partners individually.

History.
Acts 2001, ch. 353.

61-1-204. When property is partnership property.

(a) Property is partnership property if acquired in the name of:

(1) The partnership; or

(2) One (1) or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) The partnership in its name; or

(2) One (1) or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one (1) or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one (1) or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

History.
Acts 2001, ch. 353.

Cross-References.
Employees' lien on firm property, title 66, ch. 13.

Textbooks.
Pritchard on Wills and Administration of Estates (4th ed., Phillips and Robinson), § 692.

Tennessee Jurisprudence, 20 Tenn. Juris., Partnership, §§ 14, 16.

Law Reviews.
The Tennessee Corporation Act and Close Corporations for Profit (James S. Covington, Jr.), 43 Tenn. L. Rev. 183.

DECISIONS UNDER PRIOR LAW

Analysis

1. Real Property.
2. Conveyance of Partnership Property.
3. Determination of Ownership.
4. —Burden of Proof.

1. Real Property.
Provision that unless contrary intention appears, property acquired with partnership funds is partnership property, did not change the rule that real estate of partnership is held as personalty for partnership purposes, but where not needed for such purposes descends as other real estate to the heir. Marks v. Marks, 1 Tenn. App. 436, — S.W. —, 1925 Tenn. App. LEXIS 64 (Tenn. Ct. App. 1925).

The fact that partners invest firm profits in real estate does not necessarily make it partnership property. Marks v. Marks, 1 Tenn. App. 436, — S.W. —, 1925 Tenn. App. LEXIS 64 (Tenn. Ct. App. 1925).

The partnership may hold property in the

partnership name and the interest of the individual members is personal property. Karns v. Loftis, 1 Tenn. App. 574, — S.W. —, 1925 Tenn. App. LEXIS 77 (Tenn. Ct. App. 1925).

Where a partnership acquires land solely for the purpose of speculation and it is not contemplated that there shall be any conveyances between the parties, equity regards it as personal property among the partners and an agreement of one partner to release his interest is not a contract for such an interest in lands as comes within the statute of frauds. Smith v. Guy, 24 Tenn. App. 352, 144 S.W.2d 702, 1940 Tenn. App. LEXIS 41 (Tenn. Ct. App. 1940).

When a partnership once acquires real estate, with partnership funds and for partnership purposes, it then becomes personalty for all purposes and can be conveyed according to the terms of the act as other partnership property. And real estate which becomes personal property for the purposes of a partnership remains personal property for the purpose of distribution. Cultra v. Cultra, 188 Tenn. 506, 221 S.W.2d 533, 1949 Tenn. LEXIS 367 (1949).

Partnership realty must be regarded as personalty for all purposes including descent and distribution. Brown v. Brown, 45 Tenn. App. 78, 320 S.W.2d 721, 1958 Tenn. App. LEXIS 114 (Tenn. Ct. App. 1958).

2. Conveyance of Partnership Property.

A conveyance of partnership property held in the name of the partnership is made in the name of the partnership and not as a conveyance of the individual interests of the partners. Putnam v. Shoaf, 620 S.W.2d 510, 1981 Tenn. App. LEXIS 608 (Tenn. Ct. App. 1981).

Partner had no specific interest in unknown choses in action of partnership to separately convey or retain since it was property of the partnership, thus when the partner conveyed an interest in the partnership that partner retained no rights in the chose in action upon its discovery. Putnam v. Shoaf, 620 S.W.2d 510, 1981 Tenn. App. LEXIS 608 (Tenn. Ct. App. 1981).

3. Determination of Ownership.

In determining whether property is partnership property or property owned by an individual, the court must focus primarily on the intentions of the partners at the time the property was acquired. In re Fulton, 43 B.R. 273, 1984 Bankr. LEXIS 4900 (Bankr. M.D. Tenn. 1984).

Proceeds from equipment purchased before the partnership was dissolved, were partnership property. In re Henderson, 127 B.R. 168, 1991 U.S. Dist. LEXIS 6284 (M.D. Tenn. 1991).

Inventory proceeds which were turnover of inventory that was in stock when the partnership was dissolved were partnership property. In re Henderson, 127 B.R. 168, 1991 U.S. Dist. LEXIS 6284 (M.D. Tenn. 1991).

4. —Burden of Proof.

When property is titled in the name of the partnership, the party asserting that the property is not partnership property has the burden of proof. In re Fulton, 43 B.R. 273, 1984 Bankr. LEXIS 4900 (Bankr. M.D. Tenn. 1984).

PART 3

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

61-1-301. Partner agent of partnership.

Subject to the effect of a statement of partnership authority under § 61-1-303:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority;

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

History.
Acts 2001, ch. 353.

Textbooks.
Tennessee Jurisprudence, 20 Tenn. Juris., Partnership, §§ 5, 9, 10, 23, 25.

Law Reviews.
Delaware LLCs for Tennessee Lawyers? (Richard Spore), 35 No. 5 Tenn. B.J. 27 (1999).

The Tennessee Corporation Act and Close Corporations for Profit (James S. Covington, Jr.), 43 Tenn. L. Rev. 183.

Vicarious Liability and the Traditional Law Firm Partnership: What You Should Know (Paul S. Davidson), 29 No. 3 Tenn. B.J. 12 (1993).

61-1-302. Transfer of partnership property.

(a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under § 61-1-303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name;

(2) Partnership property held in the name of one (1) or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held;

(3) Partnership property held in the name of one (1) or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under § 61-1-301 and:

(1) As to subsequent transferee who gave value for property transferred under subsection (a)(1) and (2), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) As to a transferee who gave value for property transferred under subsection (a)(3), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b), from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

History.
Acts 2001, ch. 353.

Cross-References.
Conveyances declared fraudulent, § 66-3-309.

DECISIONS UNDER PRIOR LAW

Analysis

1. Real Estate Becomes Personalty.
2. Conveyance by Partnership.

1. Real Estate Becomes Personalty.
When a partnership once acquires real estate, with partnership funds and for partnership purposes, it then becomes purveyed according to the terms of the act as other partnership property. Cultra v. Cultra, 188 Tenn. 506, 221 S.W.2d 533, 1949 Tenn. LEXIS 367 (1949).

2. Conveyance by Partnership.
Where a partnership supplied a deed and acknowledgment before the deadline for the agreement, given that the conveyance was governed by partnership rules which do not require a corporate resolution, the partnership supplied the necessary elements for a good title, and therefore defendant's refusal to close the deal therefore breached the obligation of the settlement agreement, and the partnership was properly awarded damages. REM Enters. v. Frye, 958 S.W.2d 747, 1996 Tenn. App. LEXIS 417 (Tenn. Ct. App. 1996), appeal denied, Rem Enters. v. Frye, 1997 Tenn. LEXIS 85 (Tenn. Jan. 6, 1997).

61-1-303. Statement of partnership authority.

(a) A partnership may file a statement of partnership authority, which:

(1) Must include:

(A) The name of the partnership;

(B) The street address of its chief executive office (and a mailing address such as a post office box if the United States postal service does not deliver to the chief executive office) and of one (1) office in this state, if there is one; and

(C) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a filed statement of partnership authority is executed pursuant to § 61-1-105(c) and states the name of the partnership but does not contain all of the other information required by subsection (a), the statement nevertheless operates with respect to a person not a partner as provided in subsections (c) and (d).

(c) Except as otherwise provided in subsection (f), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority;

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership

authority recorded in the office of the register of deeds in the county where that real property is located is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office of the register of deeds in the county where that real property is located. The recording in the office of the register of deeds in the county where that real property is located of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(d) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(e) Except as otherwise provided in subsections (c) and (d) and §§ 61-1-704 and 61-1-805, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(f) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five (5) years after the date on which the statement, or the most recent amendment, was filed with the office of the register of deeds or with the secretary of state, as the case may be.

History.
Acts 2001, ch. 353; 2002, ch. 563, § 1; 2014, ch. 783, § 17.

61-1-304. Statement of denial.

A partner or other person named as partner in a filed statement of partnership authority may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in § 61-1-303(c) and (d).

History.
Acts 2001, ch. 353.

61-1-305. Partnership liable for partner's actionable conduct.

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the ordinary course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

History.
Acts 2001, ch. 353.

Textbooks.
Tennessee Jurisprudence, 20 Tenn. Juris., Partnership, § 26.

Law Reviews.
Consideration in Formation of Contracts in Tennessee (John H. Moore), 16 Tenn. L. Rev. 915.

Fraud Imputation Under Section 523(a)(2)(A): Is a Partner Always Liable for Wrongdoing by the Partnership? (Bernice B. Donald), 24 Mem. St. U.L. Rev. 651 (1994).

Vicarious Liability and the Traditional Law Firm Partnership: What You Should Know (Paul S. Davidson), 29 No. 3 Tenn. B.J. 12 (1993).

DECISIONS UNDER PRIOR LAW

1. Fraud.
The fraud of one general partner should be imputed to the other general partner regardless of the latter's ignorance of the fraud. Bancboston Mortg. Corp. v. Ledford, 127 B.R. 175, 1991 U.S. Dist. LEXIS 6263 (M.D. Tenn. 1991), aff'd, In re Ledford, 970 F.2d 1556, 1992 U.S. App. LEXIS 17453 (6th Cir. Tenn. 1992).

61-1-306. Partner's liability.

(a) Except as otherwise provided in subsections (b)-(g), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a registered limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a partner. This subsection (c) applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a registered limited liability partnership under § 61-1-1001(b).

(d) Subsection (c) does not affect the liability of a partner in a registered limited liability partnership for the partner's own omissions, negligence, wrongful acts, misconduct or malpractice, or that of any person under the partner's direct supervision and control.

(e) A partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership, the object of which is to recover damages or enforce the obligations arising out of the acts, omissions, malpractice or misconduct of the type described in subsection (c), unless the partner is personally liable under subsection (d).

(f) Unless otherwise agreed, a partner who receives a distribution from a registered limited liability partnership or a partner who votes for or assents to the distribution shall have no liability for the distribution under this section or any other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution.

(g) Notwithstanding any other provision of this chapter to the contrary, each person, partner, or employee required to collect, truthfully account for, and pay over to the department of revenue any tax collected from the customers of a registered limited liability partnership shall be personally liable for such taxes

in the same manner as responsible persons of a corporation under the same provisions of § 67-1-1443.

History.
Acts 2001, ch. 353; 2014, ch. 641, § 1.

Compiler's Notes.
Acts 2014, ch. 641, § 2 provided that the limitations on individual partner liability of the act, which amended this section, shall not apply to any obligation, whether arising in contract, tort, or otherwise, that was incurred or arose prior to July 1, 2014.

Textbooks.
Tennessee Jurisprudence, 20 Tenn. Juris., Partnership, §§ 21, 30, 32, 52, 62.

Law Reviews.
Some Whys and Wherefores in Drafting Shareholder Agreements (Robert L. McMurray), 23 No. 5 Tenn. B.J. 19 (1987).

Vicarious Liability and the Traditional Law Firm Partnership: What You Should Know (Paul S. Davidson), 29 No. 3 Tenn. B.J. 12 (1993).

NOTES TO DECISIONS

Analysis

1. Applicability.
2. Limited Liability Partners.
3. Partner Liability.

1. Applicability.
Horse trainers were liable under 15 U.S.C. § 1825 and 15 U.S.C. § 1824 of the Horse Protection Act of 1970 because they operated an implied partnership pursuant to T.C.A. § 61-1-306 and because their training stables transported the horse, they were liable for that transport; furthermore, trainers also admitted that they signed a check that was drawn from their training stable account in order to pay the horse's entry fee. Derickson v. USDA, 2008 FED App. 396P, 546 F.3d 335, 2008 U.S. App. LEXIS 23705 (6th Cir. Nov. 10, 2008).

2. Limited Liability Partners.
Although a developer was entitled to its full fee under a development agreement with a limited liability partnership (LLP) for construction of an apartment complex, a trial court erred in assessing judgment against the limited liability partners because the limited liability partners could not be held liable for the debts of the LLP pursuant to the Tennessee Uniform Partnership Act, T.C.A. § 61-1-306(c). Eagles Landing Dev., LLC v. Eagles Landing Apts., 386 S.W.3d 246, 2012 Tenn. App. LEXIS 68 (Tenn. Ct. App. Feb. 2, 2012), rehearing denied, Eagles Landing Dev., LLC v. Eagles Landing Apts., L.P., 386 S.W.3d 246, 2012 Tenn. App. LEXIS 926 (Tenn. Ct. App. 2012), appeal denied, Eagles Landing Dev., LLC v. Eagles Landing Apts., LP, — S.W.3d —, 2012 Tenn. LEXIS 516 (Tenn. Aug. 16, 2012).

3. Partner Liability.
Trial court's award of a portion of a discrepancy in a cleint advance fees account to the law firm as compensatory damages against a former member was reversed where although the discrepancy was discovered while the former member was a partner, the firm could not trace the genesis of the expense, and there was testimony that the expense may have, in fact, been written off at some point but not noted in the firm's financial records. Knight v. Harris, — S.W.3d —, 2018 Tenn. App. LEXIS 9 (Tenn. Ct. App. Jan. 11, 2018).

DECISIONS UNDER PRIOR LAW

Analysis

1. Joint and Several Liability.
2. Liability of New Partner.
3. Private Account of Partner.
4. Venue.
5. Satisfaction of Judgment.
6. Binding Effect of Judgment.

1. Joint and Several Liability.
Under the former Uniform Partnership Law, partners were jointly and severally liable for matters growing out of partnership's wrongful acts. East Tennessee Natural Gas Co. v. Peltz, 38 Tenn. App. 100, 270 S.W.2d 591, 1954 Tenn. App. LEXIS 106 (Tenn. Ct. App. 1954).

An injured person at his election may sue one, some, or all of the partners for the torts of a partner or of an agent for whose misconduct the partnership is liable. Johnson v. King, 221 Tenn. 292, 426 S.W.2d 196, 1968 Tenn. LEXIS 464 (1968).

Since all general partners are liable for partnership debt, the preferential payment of one of those debts will not reduce the partners' net exposure on partnership obligations; the partners will remain liable for whatever deficiency of partnership assets there may be to satisfy

the partnership debts, and that figure will be the same whether or not partnership creditors are paid ratably or some are preferred. Unsecured Creditors' Committee of Seasons Properties v. Miller & Martin, 141 B.R. 631, 1992 Bankr. LEXIS 1088 (Bankr. E.D. Tenn. 1992).

A partnership's general partner is personally liable for the payment of the partnership's tax obligations. Travelers Indem. Co. v. Rose, 139 B.R. 878, 1992 Bankr. LEXIS 575 (Bankr. W.D. Tenn. 1992).

2. Liability of New Partner.

When a new partner, upon entering a partnership, is told by the landlord that the rent of property leased by the partnership is $100 per month, which the new partner pays, the new partner is not liable for any further sum, claimed as the difference between the sum paid and the rent specified in the lease. Winer v. Williams, 165 Tenn. 190, 54 S.W.2d 723, 1932 Tenn. LEXIS 36 (1932).

3. Private Account of Partner.

A bank cannot claim the deposit of one partner, made on that partner's separate account, in order to apply it on a debt due by the partnership. Farmers State Bank v. Jones, 34 Tenn. App. 57, 232 S.W.2d 658, 1949 Tenn. App. LEXIS 140 (Tenn. Ct. App. 1949).

Fact that bank which held partnership's note mistakenly applied deposit of nonresident partner against such debt did not prevent bank from later proceeding in an orderly manner to attach such deposit. Farmers State Bank v. Jones, 34 Tenn. App. 57, 232 S.W.2d 658, 1949 Tenn. App. LEXIS 140 (Tenn. Ct. App. 1949).

4. Venue.

Suit to recover for services rendered partnership was based on the joint obligation of the partners, hence it was required to be sued in county where partnership did business and not in county where only one of the partners lived. Southgate v. Linton, 181 Tenn. 540, 181 S.W.2d 888, 1944 Tenn. LEXIS 274 (1944).

5. Satisfaction of Judgment.

A judgment against a partnership in the firm name is good and to be satisfied out of partnership assets. Karns v. Loftis, 1 Tenn. App. 574, — S.W. —, 1925 Tenn. App. LEXIS 77 (Tenn. Ct. App. 1925).

6. Binding Effect of Judgment.

A judgment against a partnership is binding on the individual partner, especially where an answer and cross-bill was filed in the name of the partner and that partner did not disavow the activities of that partner's associates in filing such pleadings. Kincade v. Jeffery-De Witt Insulator Corp., 242 F.2d 328, 1957 U.S. App. LEXIS 2797 (5th Cir. Miss. 1957).

Where suit is not brought against a partnership as such but against two individuals as joint tortfeasors, their uncontradicted proof that they were acting as partners at the time of the tort giving rise to the action would not make a judgment in favor of one res judicata as against the other. Johnson v. King, 221 Tenn. 292, 426 S.W.2d 196, 1968 Tenn. LEXIS 464 (1968).

61-1-307. Actions by and against partnership and partners.

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and, to the extent not inconsistent with § 61-1-306, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under § 61-1-306 and:

(1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) The partnership is a debtor in bankruptcy;

(3) The partner has agreed that the creditor need not exhaust partnership assets;

(4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that

exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under § 61-1-308.

History.
Acts 2001, ch. 353.

61-1-308. Purported partner.

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one (1) or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one (1) or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in subsections (a) and (b), persons who are not partners as to each other are not liable as partners to other persons.

History.
Acts 2001, ch. 353.

DECISIONS UNDER PRIOR LAW

Analysis

1. In General.
2. Proof of Partnership.
3. Bankruptcy.

1. In General.

A person holding himself out as a partner, thereby inducing another to extend credit to third party upon faith of such representation, is liable upon the doctrine of estoppel. H. T. Hackney Co. v. Robert E. Lee Hotel, 156 Tenn. 243, 300 S.W. 1, 1927 Tenn. LEXIS 108 (1927).

Person holding himself out as partner is liable as such. Mosley v. Robert Orr & Co., 6 Tenn. App. 243, — S.W. —, 1927 Tenn. App. LEXIS 135 (Tenn. Ct. App. 1927).

In an action by plaintiff against the defendants as partners to recover damages for diseased hogs delivered to him by one defendant, the other defendant denied the act to be a partnership act and the charge of the judge that, "if the defendants were partners and plaintiff knew of the partnership and had recently dealt with them as partners in similar transactions, and you find that he, as a reasonably prudent man had a right to think that he was dealing with the partnership, then the defendants would be liable as partners even if as between themselves it was not a partnership act," was a correct statement of the law. Tallent v. Fox, 24 Tenn. App. 96, 141 S.W.2d 485, 1940 Tenn. App. LEXIS 19 (Tenn. Ct. App. 1940).

As between complainant and defendant there can be no partnership by estoppel. Badger v. Boyd, 16 Tenn. App. 629, 65 S.W.2d 601, 1933 Tenn. App. LEXIS 37 (Tenn. Ct. App. 1933).

Where wife alleged in divorce petition that she and husband were "proprietors" of bakery business, and wife was awarded business as part of alimony, she was not a partner by estoppel as to contracts made by her husband as owner of business prior to divorce. Schultz, Banjan & Co. v. Bell, 23 Tenn. App. 258, 130 S.W.2d 149, 1939 Tenn. App. LEXIS 31, 168 A.L.R. 758 (Tenn. Ct. App. 1939).

In order to invoke former T.C.A. § 61-1-105, a party must represent that party's self to be a partner. Dewberry v. Maddox, 755 S.W.2d 50, 1988 Tenn. App. LEXIS 206 (Tenn. Ct. App. 1988).

2. Proof of Partnership.

Before one partner can be charged with the admission of an alleged copartner, the partnership relation must be shown — and that by other evidence than the admission itself. Badger v. Boyd, 16 Tenn. App. 629, 65 S.W.2d 601, 1933 Tenn. App. LEXIS 37 (Tenn. Ct. App. 1933).

3. Bankruptcy.

Partnership by estoppel only benefits a person who has extended credit to the alleged partnership in reliance on the representations. In re Lamb, 36 B.R. 184, 1983 Bankr. LEXIS 4785 (Bankr. E.D. Tenn. 1983).

PART 4

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

61-1-401. Partner's rights and duties.

(a) Each partner is deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) and (d) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under § 61-1-301.

(*l*) A partner has the power and authority to delegate to one (1) or more other persons the partner's rights and powers to manage and control the business and affairs of the partnership, including to delegate to agents, officers and employees of the partner or the partnership, and to delegate by a management agreement or other agreement with, or otherwise to, other persons. Such delegation by a partner shall not cause the partner to cease to be a partner of the partnership.

History.
Acts 2001, ch. 353.

Textbooks.
Tennessee Jurisprudence, 20 Tenn. Juris., Partnership, § 20.

NOTES TO DECISIONS

Analysis

1. Winding Up Fee.
2. Attorney's Fees.

1. Winding Up Fee.

In an action where the executrix of the deceased's estate filed a partition action seeking partition of the deceased's and the partner's business, the partner as the surviving partner was entitled to reasonable compensation for winding up the partnership and the evidence did not preponderate against that finding or the amount awarded. Utter v. Sherrod, 132 S.W.3d 344, 2003 Tenn. App. LEXIS 458 (Tenn. Ct. App. 2003), rehearing denied, 132 S.W.3d 344, 2003 Tenn. App. LEXIS 974 (Tenn. Ct. App. 2003), appeal denied, — S.W.3d —, 2004 Tenn. LEXIS 231 (Tenn. Mar. 8, 2004).

2. Attorney's Fees.

Trial court properly applied T.C.A. § 61-1-401 in allowing the professor to recover attorney's fees in the amount of $38,983.70 as part of the partnership winding up expenses because at the time of the hearing, the case had been in litigation for nearly three years, including motions for summary judgment and discovery, the parties had attempted mediation, and the professor bore the costs of the litigation. Therefore, the evidence did not preponderate against the amount of attorney's fees awarded by the trial court. Moran v. Willensky, 339 S.W.3d 651, 2010 Tenn. App. LEXIS 80 (Tenn. Ct. App. Feb. 2,

2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 855 (Tenn. Sept. 1, 2010).

DECISIONS UNDER PRIOR LAW

Analysis

1. Value of Partnership Interest.
2. Attorney's Fees.
3. Agreement Between Parties.

1. Value of Partnership Interest.

Since all partners have equal rights in the conduct and management of a firm's business affairs, the value of a deceased partner's interest when sold to a surviving partner was not enhanced by the fact that it gave the purchaser 80% ownership of the firm. Reed v. Robilio, 273 F. Supp. 954, 1967 U.S. Dist. LEXIS 11410 (W.D. Tenn. 1967), aff'd, 400 F.2d 730, 1968 U.S. App. LEXIS 5520 (6th Cir. 1968).

2. Attorney's Fees.

A surviving partner is entitled to attorney's fees in defending the partnership assets. Bird v. Collette, 26 Tenn. App. 181, 168 S.W.2d 797, 1942 Tenn. App. LEXIS 30 (Tenn. Ct. App. 1942).

Where complainant partners at their own expense prosecuted an action to recover firm assets against the wishes of the other partners and did so recover the assets, they were entitled to reasonable costs and expenses of the litigation, including reasonable fees to complainant's counsel. Evans v. Boggs, 35 Tenn. App. 354, 245 S.W.2d 641, 1951 Tenn. App. LEXIS 79 (Tenn. Ct. App. 1951).

3. Agreement Between Parties.

While it is true that the former Tennessee Uniform Partnership Act states that no partner is entitled to remuneration for acting in the partnership business, this rule is subject to any agreement between the partners. Fulcher v. Allen, 2 S.W.3d 207, 1999 Tenn. App. LEXIS 145 (Tenn. Ct. App. 1999).

61-1-402. Distributions in kind.

A partner has no right to receive, and may not be required to accept, a distribution in kind.

History.
Acts 2001, ch. 353.

61-1-403. Partner's rights and duties with respect to information.

(a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(1) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter; and

(2) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

History.
Acts 2001, ch. 353.

Textbooks.
Tennessee Jurisprudence, 20 Tenn. Juris., Partnership, § 46.

61-1-404. General standards of partner's conduct.

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c).

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this act or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

History.
Acts 2001, ch. 353.

Cross-References.
Accounting by surviving partner, § 66-1-108.

Textbooks.
Tennessee Jurisprudence, 20 Tenn. Juris., Partnership, § 46.

61-1-405. Actions by partnership and partners.

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(1) Enforce the partner's rights under the partnership agreement;

(2) Enforce the partner's rights under this chapter, including:

(A) The partner's rights under §§ 61-1-401, 61-1-403, or 61-1-404;

(B) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to § 61-1-701 or enforce any other right under parts 6 or 7 of this chapter; or

(C) The partner's right to compel a dissolution and winding up of the partnership business under § 61-1-801 or enforce any other right under part 8 of this chapter; or

(3) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

History.
Acts 2001, ch. 353.

NOTES TO DECISIONS

1. Action to Make Up Negative Capital Account Balance.

As a result of the contractor's wrongful dissociation, the professor, as the sole remaining partner, had the right to wind up the partnership affairs, T.C.A. § 61-1-801, and as the winding up partner, the professor was not obligated to sell the property, but T.C.A. § 61-1-803 gave the winding up partner autonomy in choosing how to proceed in that endeavor. The contractor's negative capital account balance was a debt owed to the partnership, T.C.A. § 61-1-807(b), and the professor was well within her rights under T.C.A. § 61-1-405 to sue him to make up that balance; in addition, the contractor, as the dissociated partner, was liable to the partnership for any damages arising from an obligation incurred by the dissociated partner after dissociation, T.C.A. § 61-1-702. Moran v. Willensky, 339 S.W.3d 651, 2010 Tenn. App. LEXIS 80 (Tenn. Ct. App. Feb. 2, 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 855 (Tenn. Sept. 1, 2010).

61-1-406. Continuation of partnership beyond definite term or particular undertaking.

(a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue on the basis described in subsection (a).

History.
Acts 2001, ch. 353.

61-1-407. Classes and voting.

(a) A partnership agreement may provide for classes or groups of partners having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of partners having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of partners. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any partner or class or group of partners, including an action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding. A partnership agreement may provide that any partner or class or group of partners shall have no voting rights.

(b) The partnership agreement may grant to all or certain identified partners or a specified class or group of the partners the right to vote separately or with all or any class or group of the partners on any matter. Voting by partners may be on a per capita, number, financial interest, class, group or any other basis.

(c) A partnership agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

(d) On any matter that is to be voted on by partners, the partners may take such action without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the partners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting. On any matter that is to be voted on by partners, the partners may vote in person or by proxy.

(e) If a partnership agreement provides for the manner in which it may be amended, it may be amended in that manner or with the approval of all the partners or as otherwise permitted by law. If a partnership agreement does not provide for the manner in which it may be amended, the partnership agreement may be amended with the approval of all the partners or as otherwise permitted by law.

History.
Acts 2001, ch. 353.

PART 5

TRANSFEREES AND CREDITORS OF PARTNER

61-1-501. Partner not a co-owner of partnership property.

Partnership property is owned by the partnership as an entity. A partner is

not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

History.
Acts 2001, ch. 353.

NOTES TO DECISIONS

1. Partnership Interest.
Even if a wife's challenge to a trial court's distributive award of a partnership interest, pursuant to T.C.A. § 36-4-121(f), in lieu of a property interest in the partnership had not been waived, the challenge lacked merit because the wife was not a partner and a property interest in the partnership could not be transferred to a non-partner, pursuant to T.C.A. § 61-1-501. Forbess v. Forbess, 370 S.W.3d 347, 2011 Tenn. App. LEXIS 654 (Tenn. Ct. App. Dec. 9, 2011), rehearing denied, 370 S.W.3d 347, 2012 Tenn. App. LEXIS 927 (Tenn. Ct. App. Jan. 10, 2012), appeal denied, — S.W.3d —, 2012 Tenn. LEXIS 245 (Tenn. Apr. 12, 2012).

DECISIONS UNDER PRIOR LAW

1. In General.
A copartner owns no personal specific interest in any specific property or asset of the partnership. Putnam v. Shoaf, 620 S.W.2d 510, 1981 Tenn. App. LEXIS 608 (Tenn. Ct. App. 1981).

A partner's right in "specific partnership property" under former T.C.A. § 61-1-123(1) is a possessory right which is not the same as the partner's "interest" in the assets of the partnership under that former section. Putnam v. Shoaf, 620 S.W.2d 510, 1981 Tenn. App. LEXIS 608 (Tenn. Ct. App. 1981).

The real interest of a partner in the partnership's assets, as opposed to an incidental possessory right as part of a right in "specific partnership property" under former T.C.A. § 61-1-123(1), was the partner's interest in the partnership under that former section. Putnam v. Shoaf, 620 S.W.2d 510, 1981 Tenn. App. LEXIS 608 (Tenn. Ct. App. 1981).

A conveyance of partnership property held in the name of the partnership is made in the name of the partnership and not as a conveyance of the individual interests of the partners. Putnam v. Shoaf, 620 S.W.2d 510, 1981 Tenn. App. LEXIS 608 (Tenn. Ct. App. 1981).

Partner had no specific interest in unknown choses in action of partnership to separately convey or retain since it was property of the partnership, thus when that partner conveyed that partner's own interest in the partnership that partner retained no rights in the chose in action upon its discovery. Putnam v. Shoaf, 620 S.W.2d 510, 1981 Tenn. App. LEXIS 608 (Tenn. Ct. App. 1981).

Because a partnership is a legal entity separate from its partners, a partner cannot claim title in partnership property. The partner may only claim the rights in specific partnership property as bestowed upon the partner under partnership law. When a partner files for bankruptcy, the partner's estate obtains whatever partnership interest was held by the filing partner. In re Fulton, 43 B.R. 273, 1984 Bankr. LEXIS 4900 (Bankr. M.D. Tenn. 1984).

61-1-502. Partner's transferable interest in partnership.

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. This interest is personal property.

History.
Acts 2001, ch. 353.

Law Reviews.
Partnership — Conversion of Realty Into Personalty, 21 Tenn. L. Rev. 202.

DECISIONS UNDER PRIOR LAW

Analysis

1. Partnership Property.
2. Partner's Interest.
3. Common Law Rule.

1. Partnership Property.

Partnership property is not subject to the debts of the individual partners during the life of the partnership. United States v. Worley, 213 F.2d 509, 1954 U.S. App. LEXIS 4541 (6th Cir. Tenn. 1954), cert. denied, 348 U.S. 918, 75 S. Ct. 302, 99 L. Ed. 720, 1955 U.S. LEXIS 1342 (1955), rehearing denied, 348 U.S. 940, 75 S. Ct. 361, 99 L. Ed. 736 (1955), cert. denied, 348 U.S. 917, 75 S. Ct. 301, 99 L. Ed. 719, 1955 U.S. LEXIS 1337 (1955).

2. Partner's Interest.

A partner's interest in the partnership property is his share of the surplus after all partnership debts have been paid, and that surplus alone is liable for the separate debts of each partner. United States v. Worley, 213 F.2d 509, 1954 U.S. App. LEXIS 4541 (6th Cir. Tenn. 1954), cert. denied, 348 U.S. 918, 75 S. Ct. 302, 99 L. Ed. 720, 1955 U.S. LEXIS 1342 (1955), rehearing denied, 348 U.S. 940, 75 S. Ct. 361, 99 L. Ed. 736 (1955), cert. denied, 348 U.S. 917, 75 S. Ct. 301, 99 L. Ed. 719, 1955 U.S. LEXIS 1337 (1955).

Partner had no specific interest in unknown choses in action of partnership to separately convey or retain since it was property of the partnership, thus when that partner conveyed that partner's own interest in the partnership that partner retained no rights in the chose in action upon its discovery. Putnam v. Shoaf, 620 S.W.2d 510, 1981 Tenn. App. LEXIS 608 (Tenn. Ct. App. 1981).

Since a partnership is a legal entity separate from its partners, a partner cannot claim title in partnership property. The partner may only claim the rights in specific partnership property as bestowed upon the partner under partnership law. When a partner files for bankruptcy, the partner's estate obtains whatever partnership interest was held by the filing partner. In re Fulton, 43 B.R. 273, 1984 Bankr. LEXIS 4900 (Bankr. M.D. Tenn. 1984).

3. Common Law Rule.

Realty was treated as personalty for purposes of the partnership, but when not so needed descended to the heirs even as against the surviving spouse of a deceased partner. Williamson v. Fontain, 66 Tenn. 212, 1874 Tenn. LEXIS 108 (1874).

61-1-503. Transfer of partner's transferable interest.

(a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(1) Is permissible;

(2) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(3) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

(1) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(3) To seek under § 61-1-801(6) a judicial determination that it is equitable to wind up the partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the transferable interest so transferred.

(e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction or prohibition on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

History.
Acts 2001, ch. 353.

DECISIONS UNDER PRIOR LAW

1. Termination of Partnership.
Partnership could not terminate after dissolution where there had been no formal winding up period because the investors knew nothing of the termination, and where creditor's claim had not been paid out of the proceeds of the liquidated partnership property. In re Henderson, 127 B.R. 168, 1991 U.S. Dist. LEXIS 6284 (M.D. Tenn. 1991).

61-1-504. Partner's transferable interest subject to charging order.

(a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) By the judgment debtor;

(2) With property other than partnership property, by one (1) or more of the other partners; or

(3) With partnership property, by one (1) or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

History.
Acts 2001, ch. 353.

PART 6

PARTNER'S DISSOCIATION

61-1-601. Events causing partner's dissociation.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;

(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if:

(A) It is unlawful to carry on the partnership business with that partner;

(B) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(C) Within ninety (90) days after the partnership notifies a corporate partner or limited liability company partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter, articles of organization or equivalent has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation or organization, there is no revocation of the certificate of dissolution or no reinstatement of its charter, articles of organization or equivalent or its right to conduct business; or

(D) A partnership that is a partner has been dissolved and its business is being wound up;

(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:

(A) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(B) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under § 61-1-404; or

(C) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) The partner's:

(A) Becoming a debtor in bankruptcy;

(B) Executing an assignment for the benefit of creditors;

(C) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(D) Failing, within ninety (90) days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety (90)

days after the expiration of a stay to have the appointment vacated;

(7) In the case of a partner who is an individual:

(A) The partner's death;

(B) The appointment of a guardian or general conservator for the partner; or

(C) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of a partner who is not an individual, partnership, corporation, limited liability company, trust, or estate.

History.
Acts 2001, ch. 353.

NOTES TO DECISIONS

1. Withdrawal of Partner.
It was undisputed in the record that the parties' relationship constituted a partnership, as defined in T.C.A. § 61-1-101, and, as such, the trial court correctly applied the former Tennessee Uniform Partnership Act, T.C.A. § 61-1-101 et seq. Because the undisputed proof indicated that the contractor left the project before it was completed, a preponderance of the evidence supported the trial court's finding that the contractor breached the partnership agreement and wrongfully dissociated from the partnership pursuant to T.C.A. § 61-1-601 and T.C.A. § 61-1-602(b). Moran v. Willensky, 339 S.W.3d 651, 2010 Tenn. App. LEXIS 80 (Tenn. Ct. App. Feb. 2, 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 855 (Tenn. Sept. 1, 2010).

DECISIONS UNDER PRIOR LAW

Analysis

1. Liability of Deceased Partner's Estate.
2. Powers of Executors or Administrators.
3. Limitation on Accounting.
4. Withdrawal of Partner.
5. Termination of Partnership.
6. Judicial Decree.
7. Equitable Circumstances.

1. Liability of Deceased Partner's Estate.
Where a partner of the deceased renewed notes of the partnership in the name of the partnership after the death of the deceased, the renewal notes could not bind the estate of the deceased; however, this does not necessarily mean the estate could not be bound on the original notes for which the renewal notes were executed. First Nat'l Bank v. Hunter, 22 Tenn. App. 626, 125 S.W.2d 183, 1938 Tenn. App. LEXIS 63 (Tenn. Ct. App. 1938).

2. Powers of Executors or Administrators.
Ordinarily, an executor or administrator of a deceased partner has no power to engage in the continuation of the partnership business. Lightfoot v. Hardaway, 751 S.W.2d 844, 1988 Tenn. App. LEXIS 46 (Tenn. Ct. App. 1988).

3. Limitation on Accounting.
Suit for an accounting by representative of deceased partner filed more than six years after date of death was barred by six-year limitation period, since action accrued on date of dissolution — the date of the death of deceased partner. Manley v. Belew, 190 Tenn. 698, 231 S.W.2d 353, 1950 Tenn. LEXIS 537 (1950).

4. Withdrawal of Partner.
Where two partners of four member partnership sold their interest to the other two partners and withdrew, and thereafter partnership assets were transferred to a corporation in exchange for stock, the partnership was dis-

solved prior to the formation of the corporation and assets in hands of corporation were not held on the same basis as in the original partnership. Flexer Theatres of Mississippi, Inc. v. United States, 224 F.2d 445, 1955 U.S. App. LEXIS 5091 (6th Cir. Tenn. 1955).

5. Termination of Partnership.

Partnership could not terminate after dissolution where there had been no formal winding up period because the investors knew nothing of the termination, and where creditor's claim had not been paid out of the proceeds of the liquidated partnership property. In re Henderson, 127 B.R. 168, 1991 U.S. Dist. LEXIS 6284 (M.D. Tenn. 1991).

Foreclosure which effectively terminated the partnership by removing the partnership's major asset and the reason for its existence constituted a dissolution. Fulcher v. Allen, 2 S.W.3d 207, 1999 Tenn. App. LEXIS 145 (Tenn. Ct. App. 1999).

6. Judicial Decree.

The filing of a lawsuit seeking dissolution does not necessarily effect a dissolution upon the filing of the cause, and where the court determines that dissolution is proper, an order of dissolution should be entered; but such an order is not absolutely necessary where all partners agree that dissolution be effected. Hoppen v. Powell, 600 S.W.2d 736, 1980 Tenn. App. LEXIS 350 (Tenn. Ct. App. 1980).

7. Equitable Circumstances.

Failure of partners to establish a fair market value annually as required by the partnership agreement rendered it impossible to withdraw or retire from the partnership in accordance with the partnership agreement, and brought the case within the provisions of former T.C.A. § 61-1-131. Piccolo v. Stagmaier, 867 S.W.2d 319, 1993 Tenn. App. LEXIS 242 (Tenn. Ct. App. 1993), appeal denied, 1993 Tenn. LEXIS 264 (Tenn. July 6, 1993).

61-1-602. Partner's power to dissociate — Wrongful dissociation.

(a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to § 61-1-601(1).

(b) A partner's dissociation is wrongful only if:

(1) It is in breach of an express provision of the partnership agreement; or

(2) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(A) The partner withdraws by express will, unless the withdrawal follows within ninety (90) days after another partner's dissociation by death or otherwise under § 61-1-601(6)-(10) or wrongful dissociation under this subsection (b);

(B) The partner is expelled by judicial determination under § 61-1-601(5);

(C) The partner is dissociated by becoming a debtor in bankruptcy; or

(D) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

History.

Acts 2001, ch. 353.

NOTES TO DECISIONS

1. Leaving Project Before Completion as Wrongful Dissociation.

It was undisputed in the record that the parties' relationship constituted a partnership, as defined in T.C.A. § 61-1-101, and, as such, the trial court correctly applied the former Tennessee Uniform Partnership Act, T.C.A. § 61-1-101 et seq. Because the undisputed

proof indicated that the contractor left the project before it was completed, a preponderance of the evidence supported the trial court's finding that the contractor breached the partnership agreement and wrongfully dissociated from the partnership pursuant to T.C.A. § 61-1-601 and T.C.A. § 61-1-602(b). Moran v. Willensky, 339 S.W.3d 651, 2010 Tenn. App. LEXIS 80 (Tenn. Ct. App. Feb. 2, 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 855 (Tenn. Sept. 1, 2010).

61-1-603. Effect of partner's dissociation.

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, part 8 of this chapter applies; otherwise, part 7 of this chapter applies.

(b) Upon a partner's dissociation:

(1) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in § 61-1-803;

(2) The partner's duty of loyalty under § 61-1-404(b)(3) terminates; and

(3) The partner's duty of loyalty under § 61-1-404(b)(1) and (2) and duty of care under § 61-1-404(c) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to § 61-1-803.

History.
Acts 2001, ch. 353.

PART 7

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

61-1-701. Purchase of dissociated partner's interest.

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under § 61-1-801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under § 61-1-807(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under § 61-1-602(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under § 61-1-702.

(e) If no agreement for the purchase of a dissociated partner's interest is

reached within one hundred twenty (120) days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) If a deferred payment is authorized under subsection (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) must be accompanied by the following:

(1) A statement of partnership assets and liabilities as of the date of dissociation;

(2) The latest available partnership balance sheet and income statement, if any;

(3) An explanation of how the estimated amount of the payment was calculated; and

(4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty (120) days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause any material hardship to the business of the partnership. A deferred payment must bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to § 61-1-405(b)(2)(B), to determine the buyout price of that partner's interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced within one hundred twenty (120) days after the partnership has tendered payment or an offer to pay or within one (1) year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g).

History.

Acts 2001, ch. 353; 2002, ch. 563, § 3.

61-1-702. Dissociated partner's power to bind and liability to partnership.

(a) For one (1) year after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under part 9 of this chapter, is bound by an act of the dissociated partner which would have bound the partnership under § 61-1-301 before dissociation only if at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated partner was then a partner;

(2) Did not have notice of the partner's dissociation; and

(3) Is not deemed to have had knowledge under § 61-1-303(d) or notice under § 61-1-704(c).

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a).

History.
Acts 2001, ch. 353.

NOTES TO DECISIONS

1. Liability of Dissociated Partner.
As a result of the contractor's wrongful dissociation, the professor, as the sole remaining partner, had the right to wind up the partnership affairs, T.C.A. § 61-1-801, and as the winding up partner, the professor was not obligated to sell the property, but T.C.A. § 61-1-803 gave the winding up partner autonomy in choosing how to proceed in that endeavor. The contractor's negative capital account balance was a debt owed to the partnership, T.C.A. § 61-1-807(b), and the professor was well within her rights under T.C.A. § 61-1-405 to sue him to make up that balance; in addition, the contractor, as the dissociated partner, was liable to the partnership for any damages arising from an obligation incurred by the dissociated partner after dissociation, T.C.A. § 61-1-702. Moran v. Willensky, 339 S.W.3d 651, 2010 Tenn. App. LEXIS 80 (Tenn. Ct. App. Feb. 2, 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 855 (Tenn. Sept. 1, 2010).

61-1-703. Dissociated partner's liability to other persons.

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (b).

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under part 9 of this chapter, within one year after the partner's dissociation, only if the obligation is one for which such dissociated partner would be liable under § 61-1-306 if such dissociated partner had not dissociated and at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated partner was then a partner;

(2) Did not have notice of the partner's dissociation; and

(3) Is not deemed to have had knowledge under § 61-1-303(d) or notice under § 61-1-704(c).

(c) By agreement with the partnership creditor and the partners continuing

the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

History.
Acts 2001, ch. 353.

DECISIONS UNDER PRIOR LAW

1. Withdrawal of Partners.

Although upon withdrawal of one or more partners, the partnership may allow the business to continue in the same name with the withdrawing partners being compensated for their interest in the business, nevertheless the first or terminated partnership is a different business association from the partnership or other entity that operates the continuing business. Hodge v. DMNS Co., 652 S.W.2d 762, 1982 Tenn. App. LEXIS 455 (Tenn. Ct. App. 1982).

The withdrawal of two partners from a partnership, while the business was continued in lieu of liquidation, did not amount to a "sale or transfer by the borrower" of the property held by the partnership for purposes of a "due-on-sale" clause, even though by operation of law the entity had changed. Hodge v. DMNS Co., 652 S.W.2d 762, 1982 Tenn. App. LEXIS 455 (Tenn. Ct. App. 1982).

Investors in a partnership did not lose their standing as partnership creditors when one partner assigned his interest to another, but became creditors of the continuing entity. In re Henderson, 127 B.R. 168, 1991 U.S. Dist. LEXIS 6284 (M.D. Tenn. 1991).

61-1-704. Statement of dissociation.

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of § 61-1-303(c) and (d).

(c) For the purposes of §§ 61-1-702(a)(3) and 61-1-703(b)(3), a person not a partner is deemed to have notice of the dissociation ninety (90) days after the statement of dissociation is filed.

History.
Acts 2001, ch. 353.

61-1-705. Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as a part of the partnership name, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

History.
Acts 2001, ch. 353.

PART 8

WINDING UP PARTNERSHIP BUSINESS

61-1-801. Events causing dissolution and winding up of partnership business.

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under § 61-1-601(2)-(10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) In a partnership for a definite term or particular undertaking:

(A) Within ninety (90) days after a partner's dissociation by death or otherwise under § 61-1-601(6)-(10) or wrongful dissociation under § 61-1-602(b), at least half of the remaining partners express the will to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to § 61-1-602(b)(2)(A) constitutes the expression of that partner's will to wind up the partnership business;

(B) The express will of all of the partners to wind up the partnership business; or

(C) The expiration of the term or the completion of the undertaking;

(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety (90) days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) On application by a partner, a judicial determination that:

(A) The economic purpose of the partnership is likely to be unreasonably frustrated;

(B) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(C) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(A) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(B) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

History.
Acts 2001, ch. 353; 2002, ch. 563, § 4.

NOTES TO DECISIONS

1. Wrongful Dissociation.

As a result of the contractor's wrongful dissociation, the professor, as the sole remaining partner, had the right to wind up the partnership affairs, T.C.A. § 61-1-801, and as the winding up partner, the professor was not obligated to sell the property, but T.C.A. § 61-1-803 gave the winding up partner autonomy in choosing how to proceed in that endeavor. The contractor's negative capital account balance was a debt owed to the partnership, T.C.A. § 61-1-807(b), and the professor was well within her rights under T.C.A. § 61-1-405 to sue him to make up that balance; in addition, the contractor, as the dissociated partner, was liable to the partnership for any damages arising from an obligation incurred by the dissociated partner after dissociation, T.C.A. § 61-1-702. Moran v. Willensky, 339 S.W.3d 651, 2010 Tenn. App. LEXIS 80 (Tenn. Ct. App. Feb. 2, 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 855 (Tenn. Sept. 1, 2010).

61-1-802. Partnership continues after dissolution.

(a) Subject to subsection (b), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

(1) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(2) The rights of a third party accruing under § 61-1-804(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

History.

Acts 2001, ch. 353.

DECISIONS UNDER PRIOR LAW

Analysis

1. Partner Binding Copartner Upon Dissolution.
2. Withdrawal of Partner.
3. Termination of Partnership.

1. Partner Binding Copartner Upon Dissolution.

One partner could, upon dissolution, bind his copartner upon a contract for an account to take stock and audit the books, where such partner was not a bankrupt within the meaning of former T.C.A. § 61-1-101. Conyers v. Fisher, 4 Tenn. App. 127, — S.W. —, 1926 Tenn. App. LEXIS 171 (Tenn. Ct. App. 1926).

2. Withdrawal of Partner.

Although upon withdrawal of one or more partners, the partnership may allow the business to continue in the same name with the withdrawing partners being compensated for their interest in the business, nevertheless the first or terminated partnership is a different business association from the partnership or other entity that operates the continuing business. Hodge v. DMNS Co., 652 S.W.2d 762, 1982 Tenn. App. LEXIS 455 (Tenn. Ct. App. 1982).

3. Termination of Partnership.

Partnership could not terminate after dissolution where there had been no formal winding up period because the investors knew nothing of the termination, and where creditor's claim had not been paid out of the proceeds of the liquidated partnership property. In re Henderson, 127 B.R. 168, 1991 U.S. Dist. LEXIS 6284 (M.D. Tenn. 1991).

61-1-803. Right to wind up partnership business.

(a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, a court of equity jurisdiction in the county where the partnership's chief executive office is or was last located, for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to § 61-1-807, settle disputes by mediation or arbitration, and perform other necessary acts.

History.
Acts 2001, ch. 353.

Cross-References.
Survivorship in partnership property, § 66-1-108.

Textbooks.
Pritchard on Wills and Administration of Estates (4th ed., Phillips and Robinson), § 628.

NOTES TO DECISIONS

1. Autonomy of Winding Up Partner.
As a result of the contractor's wrongful dissociation, the professor, as the sole remaining partner, had the right to wind up the partnership affairs, T.C.A. § 61-1-801, and as the winding up partner, the professor was not obligated to sell the property, but T.C.A. § 61-1-803 gave the winding up partner autonomy in choosing how to proceed in that endeavor. The contractor's negative capital account balance was a debt owed to the partnership, T.C.A. § 61-1-807(b), and the professor was well within her rights under T.C.A. § 61-1-405 to sue him to make up that balance; in addition, the contractor, as the dissociated partner, was liable to the partnership for any damages arising from an obligation incurred by the dissociated partner after dissociation, T.C.A. § 61-1-702. Moran v. Willensky, 339 S.W.3d 651, 2010 Tenn. App. LEXIS 80 (Tenn. Ct. App. Feb. 2, 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 855 (Tenn. Sept. 1, 2010).

DECISIONS UNDER PRIOR LAW

Analysis

1. Generally.
2. Powers of Executors or Administrators.
3. Waiver of Right.
4. Insurance.

1. Generally.
In winding up partnership affairs, the liquidating partner owes a continuing fiduciary duty to the other partners, and has an obligation to act equitably toward them. However, these obligations run between partners and do not absolve any partner from being bound by the liquidating partner's actions in winding up partnership affairs. Jefferson Ins. Co. v. Curle, 771 S.W.2d 424, 1989 Tenn. App. LEXIS 30 (Tenn. Ct. App. 1989).

2. Powers of Executors or Administrators.
Ordinarily, an executor or administrator of a deceased partner has no power to engage in the continuation of the partnership business. Lightfoot v. Hardaway, 751 S.W.2d 844, 1988 Tenn. App. LEXIS 46 (Tenn. Ct. App. 1988).

3. Waiver of Right.
Partner waived his right to require a "winding up" of the business and impliedly consented to its continuation where the partner agreed to put a value on the assets, dismissed that partner's own request for a receiver and failed to request a wind-up and liquidation, demanded a percentage of profits of the dissolved partnership, and allowed the other partner to continue to run the business after its dissolution. Shep-

herd v. Griffin, 929 S.W.2d 336, 1995 Tenn. App. LEXIS 828 (Tenn. Ct. App. 1995).

4. Insurance.

Cancellation of the partnership insurance policy and collection of unused premiums are within the liquidating partner's authority in winding up the partnership affairs. Jefferson Ins. Co. v. Curle, 771 S.W.2d 424, 1989 Tenn. App. LEXIS 30 (Tenn. Ct. App. 1989).

61-1-804. Partner's power to bind partnership after dissolution.

Subject to § 61-1-805, a partnership is bound by a partner's act after dissolution that:

(1) Is appropriate for winding up the partnership business; or

(2) Would have bound the partnership under § 61-1-301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

History.

Acts 2001, ch. 353.

Textbooks.

Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppeard), § 803(1.2).4.

DECISIONS UNDER PRIOR LAW

Analysis

1. In General.
2. Notice of Dissolution.
3. —Burden of Proof.
4. Liability of Deceased Partner's Estate.

1. In General.

This section as it relates to notice or knowledge, is but an enactment of the common-law rules. Letellier-Phillips Paper Co. v. Fiedler, 32 Tenn. App. 137, 222 S.W.2d 42, 1949 Tenn. App. LEXIS 86 (Tenn. Ct. App. 1949).

In winding up partnership affairs, the liquidating partner owes a continuing fiduciary duty to the other partners, and has an obligation to act equitably toward them. However, these obligations run between partners and do not absolve any partner from being bound by the liquidating partner's actions in winding up partnership affairs. Jefferson Ins. Co. v. Curle, 771 S.W.2d 424, 1989 Tenn. App. LEXIS 30 (Tenn. Ct. App. 1989).

Cancellation of the partnership insurance policy and collection of unused premiums are within the liquidating partner's authority in winding up the partnership affairs. Jefferson Ins. Co. v. Curle, 771 S.W.2d 424, 1989 Tenn. App. LEXIS 30 (Tenn. Ct. App. 1989).

2. Notice of Dissolution.

Registration of cabs owned by partnership in name of individual partner did not discharge other partner from partnership debt in absence of actual notice. Johnson Tire Co. v. Maddux, 188 Tenn. 626, 221 S.W.2d 948, 1949 Tenn. LEXIS 380 (1949).

The dissolution of a partnership does not necessarily terminate the liability of the retiring partner to third persons who subsequently deal with the remaining partner on the assumption of the continued existence of the firm, since third persons who have previously dealt with the firm must have actual knowledge of the dissolution and third persons who have not previously dealt with the firm but who knew of its existence must be given constructive notice. Third Nat'l Bank v. Keathley, 35 Tenn. App. 82, 242 S.W.2d 760, 1951 Tenn. App. LEXIS 117 (Tenn. Ct. App. 1951).

3. —Burden of Proof.

If partner denies liability on alleged partnership debt following dissolution, the burden is upon him to show creditor had notice of dissolution. Johnson Tire Co. v. Maddux, 188 Tenn. 626, 221 S.W.2d 948, 1949 Tenn. LEXIS 380 (1949).

4. Liability of Deceased Partner's Estate.

Where a partner of the deceased renewed notes of the partnership in the name of the partnership after the death of the deceased, the renewal notes could not bind the estate of the deceased; however, this does not necessarily mean the estate could not be bound on the original notes for which the renewal notes were executed. First Nat'l Bank v. Hunter, 22 Tenn. App. 626, 125 S.W.2d 183, 1938 Tenn. App. LEXIS 63 (Tenn. Ct. App. 1938).

61-1-805. Statement of dissolution.

(a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of § 61-1-303(c) and is a limitation on authority for the purposes of § 61-1-303(d).

(c) For the purposes of §§ 61-1-301 and 61-1-804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety (90) days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in § 61-1-303(c) and (d) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

History.
Acts 2001, ch. 353.

61-1-806. Partner's liability to other partners after dissolution.

(a) Except as otherwise provided in subsection (b), after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under § 61-1-804.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under § 61-1-804(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

History.
Acts 2001, ch. 353.

61-1-807. Settlement of accounts among partners.

(a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b).

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account, but exclude from the calculation charges attributable to an obligation for which the partner is not personally liable under § 61-1-306.

(c) If a partner fails to contribute the full amount required under subsection (b), all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under § 61-1-306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under § 61-1-306.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under § 61-1-306.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

History.
Acts 2001, ch. 353; 2002, ch. 563, §§ 5, 6.

Law Reviews.
Partnership — Conversion of Partnership Property — Statute of Frauds, 16 Tenn. L. Rev. 885.

Partnership — No Good-Faith Requirement for Dissolution, 11 Mem. St. U.L. Rev. 143.

NOTES TO DECISIONS

Analysis

1. Negative Capital Account Balance as Debt to Partnership.
2. Distribution.

1. Negative Capital Account Balance as Debt to Partnership.

As a result of the contractor's wrongful dissociation, the professor, as the sole remaining partner, had the right to wind up the partnership affairs, T.C.A. § 61-1-801, and as the winding up partner, the professor was not obligated to sell the property, but T.C.A. § 61-1-803 gave the winding up partner autonomy in choosing how to proceed in that endeavor. The contractor's negative capital account balance was a debt owed to the partnership, T.C.A. § 61-1-807(b), and the professor was well within her rights under T.C.A. § 61-1-405 to sue him to make up that balance; in addition, the contractor, as the dissociated partner, was liable to the partnership for any damages arising from an obligation incurred by the dissociated partner after dissociation, T.C.A. § 61-1-702. Moran v. Willensky, 339 S.W.3d 651, 2010 Tenn. App. LEXIS 80 (Tenn. Ct. App. Feb. 2, 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 855 (Tenn. Sept. 1, 2010).

2. Distribution.

Trial court did not err in distributing some of a dairy partnership's assets before the actual winding up of the partnership and payment of its debts because the trial court clearly intended for the parties to proceed with winding up the partnership business under its supervision in accordance with T.C.A. § 61-1-807; the trial court intended that any debts of the partnership would be paid first, as a part of the winding up, and as a part of the winding up, when all of the assets were sold and any legitimate partnership debts were paid, the estate would receive a credit for its share of the partnership bank account, Swecker v. Swecker, 360 S.W.3d 422, 2011 Tenn. App. LEXIS 25 (Tenn. Ct. App. Jan. 26, 2011), appeal denied, — S.W.3d —, 2011 Tenn. LEXIS 692 (Tenn. July 14, 2011).

DECISIONS UNDER PRIOR LAW

Analysis

1. General Accounting.
2. Application.
3. Where Section Does Not Apply.
4. Attorney's Fees.
5. Legal Rights of Wrongdoer.

1. General Accounting.

Where the partners of a livestock business

were able to agree on the profits due each out of one transaction of the partnership but could not agree on the rights of each in many other transactions, the settlement of the rights arising out of the agreed transaction could not be enforced in a court of law until there had been a general accounting of all the transactions. Davis v. Fisher, 27 Tenn. App. 663, 184 S.W.2d 400, 1944 Tenn. App. LEXIS 105 (Tenn. Ct. App. 1944).

Where fraud was practiced by one of the partners in charge of the business and discovered by the other one after that partner had sold the partner's own interest therein incurring injury an accounting was as proper as if the seller had sold to the partner. Kelso v. Kelso, 40 Tenn. App. 681, 292 S.W.2d 483, 1955 Tenn. App. LEXIS 117 (Tenn. Ct. App. 1955).

2. Application.

Where there were no provisions in the partnership agreement relative to dissolution, distribution of assets or accounting upon dissolution, the provisions of the former Uniform Partnership Act applied as between the two partners. Hoppen v. Powell, 600 S.W.2d 736, 1980 Tenn. App. LEXIS 350 (Tenn. Ct. App. 1980).

3. Where Section Does Not Apply.

Where it did not appear that partner had breached the partnership contract or that that partner had wrongfully caused the dissolution of the partnership, this section did not apply in ascertaining the value of that partner's interest in the partnership. Young v. Cooper, 30 Tenn. App. 55, 203 S.W.2d 376, 1947 Tenn. App. LEXIS 70 (Tenn. Ct. App. 1947).

4. Attorney's Fees.

A surviving partner is entitled to attorney's fees in defending the partnership assets. Bird v. Collette, 26 Tenn. App. 181, 168 S.W.2d 797, 1942 Tenn. App. LEXIS 30 (Tenn. Ct. App. 1942).

5. Legal Rights of Wrongdoer.

Equity follows the law; and because this section covers the application of property upon dissolution resulting from a partner's wrongful acts, the partner at fault cannot be subject to the clean hands doctrine and summarily denied any of the partnership's assets, but has legal rights under this section. Hoppen v. Powell, 600 S.W.2d 736, 1980 Tenn. App. LEXIS 350 (Tenn. Ct. App. 1980).

PART 9

CONVERSIONS AND MERGERS

61-1-901. Definitions.

In this part:

(1) "General partner" means a partner in a partnership and a general partner in a limited partnership;

(2) "Limited partner" means a limited partner in a limited partnership;

(3) "Limited partnership" means a limited partnership created under the Revised Uniform Limited Partnership Act of this state, compiled in chapter 2 of this title, predecessor law, or comparable law of another jurisdiction;

(4) "Partner" includes both a general partner and a limited partner.

History.
Acts 2001, ch. 353.

61-1-902. Conversion of partnership to limited partnership.

(a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(1) A statement that the partnership was converted to a limited partnership from a partnership;

(2) Its former name; and

(3) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Revised Uniform Limited Partnership Act of this state, compiled in chapter 2 of this title.

History.
Acts 2001, ch. 353.

61-1-903. Conversion of limited partnership to partnership.

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

History.
Acts 2001, ch. 353.

61-1-904. Effect of conversion.

(a) A partnership or limited partnership that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting partnership or limited partner-

ship remains vested in the converted entity;

(2) All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(3) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

History.
Acts 2001, ch. 353.

61-1-905. Merger of partnerships.

(a) Pursuant to a plan of merger approved as provided in subsection (c), a partnership may be merged with one (1) or more partnerships or limited partnerships.

(b) The plan of merger must set forth:

(1) The name of each partnership or limited partnership that is a party to the merger;

(2) The name of the surviving entity into which the other partnership or limited partnerships will merge;

(3) Whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(4) The terms and conditions of the merger;

(5) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

(6) The street address of the surviving entity's chief executive office.

(c) The plan of merger must be approved:

(1) In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(2) In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:

(1) The approval of the plan of merger by all parties to the merger, as provided in subsection (c);

(2) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(3) Any effective date specified in the plan of merger.

History.
Acts 2001, ch. 353.

61-1-906. Effect of merger.

(a) When a merger takes effect:

(1) The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

(2) All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(b) The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(c) A partner of the surviving partnership or limited partnership is liable for:

(1) All obligations of a party to the merger for which the partner was personally liable before the merger;

(2) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(3) All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in § 61-1-807 or in the provisions of any limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under § 61-1-701 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under § 61-1-702 by an act of a general partner dissociated under this subsection (e), and the partner is liable under § 61-1-703 for transactions entered into by the surviving entity after the merger takes effect.

History.
Acts 2001, ch. 353.

61-1-907. Statement of merger.

(a) After a merger, the surviving partnership or limited partnership may file a statement that one (1) or more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

(1) The name of each partnership or limited partnership that is a party to the merger;

(2) The name of the surviving entity into which the other partnerships or limited partnership were merged;

(3) The street address of the surviving entity's chief executive office (and a mailing address such as a post office box if the United States postal service does not deliver to the chief executive office) and of an office in this state, if any; and

(4) Whether the surviving entity is a partnership or a limited partnership.

(c) Except as otherwise provided in subsection (d), for the purposes of § 61-1-302, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For the purposes of § 61-1-302, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(e) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to § 61-1-105(c), stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b), operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (c) and (d).

History.
Acts 2001, ch. 353; 2014, ch. 783, § 18.

61-1-908. Nonexclusive.

This part is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

History.
Acts 2001, ch. 353.

PART 10

LIMITED LIABILITY PARTNERSHIP

61-1-1001. Application process — Registered limited liability partnership.

(a) To become a registered limited liability partnership, a partnership must file with the secretary of state an application stating the name of the partnership; the address of its principal office, and a mailing address such as a post office box if the United States postal service does not deliver to the principal office if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership will be required to maintain; a brief statement of the business in which the partnership engages; other matters that the partnership determines to include; and that the partnership thereby applies for status as a registered limited liability partnership.

(b) The application must be executed by one (1) or more partners authorized to execute an application. The registration of a general partnership or limited partnership as a registered limited liability partnership must be approved by a majority of the partners or as otherwise provided in the partnership agreement, or in the case of a limited partnership, by all of the partners, notwithstanding any provision to the contrary in the limited partnership agreement, unless such limited partnership was formed after July 1, 1995, and the original agreement of limited partnership provided for a conversion or a procedure of conversion of the limited partnership to a registered limited liability partnership without the consent of all partners, in which case the approval or procedure under the original limited partnership agreement shall be sufficient.

(c) The application must be accompanied by a fee of fifty dollars ($50.00) for each partner on the date of filing, subject to a minimum of two hundred fifty dollars ($250) and a maximum of two thousand five hundred dollars ($2,500).

(d) The secretary of state shall register as a registered limited liability partnership any partnership that submits a completed application with the required fee.

(e) A partnership registered under this section shall pay, in each year following the year in which its application is filed, on a date specified by the secretary of state, an annual fee of fifty dollars ($50.00) for each partner on the date of filing, subject to a minimum of two hundred fifty dollars ($250) and a maximum of two thousand five hundred dollars ($2,500). The fee must be accompanied by a notice, on a form provided by the secretary of state, of any material changes in the information contained in the partnership's application for registration.

(f) A partnership becomes a registered limited liability partnership at the time of the filing of the application, or at a later time as is specified in the application, if there has been substantial compliance with this chapter. Registration remains effective until:

(1) The secretary of state files a written withdrawal statement or other

similar document:

(A) Executed and submitted by one (1) or more partners authorized to execute a withdrawal statement, which shall be accompanied by a fee of twenty dollars ($20.00); and

(B) Accompanied by a tax clearance for termination confirmation of good standing by the department of revenue; or withdrawal relative to such registered limited liability partnership; or

(2) Sixty (60) days after the secretary of state mails to the partnership at its last address of record a notice that the partnership has failed to make timely payment of the annual fee specified in subsection (e), unless the fee is paid within the sixty-day period.

(g) The status of a partnership as a registered limited liability partnership and the liability of the partners of the partnership is not affected by:

(1) Errors in the information stated in an application under subsection (a) or a notice under subsection (e); or

(2) Changes after the filing of such an application or notice in the information stated in the application or notice.

(h) The secretary of state may provide forms for an application under subsection (a) or a notice under subsection (e).

(i) A partnership that registers as a registered limited liability partnership is not deemed to have dissolved as a result of such registration and is for all purposes the same partnership that existed before the registration and continues to be a partnership under the laws of this state.

(j) If a registered limited liability partnership dissolves and the business of the partnership is continued without winding up or liquidation of the partnership affairs, the partnership that continues the business of the dissolved partnership is a registered limited liability partnership and is not required to file a new application and is deemed to have filed any documents required or permitted under this chapter which were filed by the predecessor partnership.

(k) If a registered limited liability partnership dissolves and the business of the partnership is not continued, then during the wind up or liquidation period the partners of such partnership shall continue to be subject to § 61-1-306(c)-(f).

(*l*) If a partnership registers as a registered limited liability partnership, a partner (in the case of a general partnership), or a general partner (in the case of a limited partnership) remains liable for an obligation incurred by the partnership before the partnership registered as a registered limited liability partnership. The partner's liability for obligations and liabilities of the registered limited liability partnership incurred after registration is as provided in § 61-1-306.

(m) The fact that an application or notice is on file in the office of the secretary of state is notice that the partnership is a registered limited liability partnership and is notice of all other facts set forth in the application or notice.

(n) A registered limited liability partnership may amend its registration by filing with the secretary of state a statement of amendment containing the name of the partnership, the address of its principal office or registered office in this state, and the amendment. The statement of amendment shall be accompanied by a fee of twenty dollars ($20.00).

(o) The secretary of state may furnish, upon request and payment of a fee of twenty dollars ($20.00), a certificate of good standing indicating confirmation that a registered limited liability partnership is registered active and in good standing.

History.

Acts 1995, ch. 400, § 9; 1998, ch. 890, § 5; 2001, ch. 353; T.C.A., § 61-1-143; Acts 2009, ch. 354, § 1; 2010, ch. 741, § 49; 2014, ch. 783, § 19; 2017, ch. 440, § 2; 2018, ch. 575, §§ 36-40.

Compiler's Notes.

Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2 — 43; Shan., §§ 3141b2 — 3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53 — 3118a93; Acts 1927, ch. 34, §§ 1 — 3; Code 1932, §§ 7841 — 7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A.(orig. ed.), §§ 61-101 — 61-142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1 — 10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

Amendments.

The 2018 amendment, in (a), substituted "its principal office, and a mailing address such as a post office box if the United States postal service does not deliver to the principal office" for "its principal office"; in (b), inserted "or limited partnership" following "a general partnership" and added the language beginning with ", or in the case of a limited partnership ..." to the end; inserted "confirmation of good standing by the department of revenue;" in (f)(1)(B); inserted "(in the case of a general partnership), or a general partner (in the case of a limited partnership)" in (*l*); and rewrote (o) which read: "The secretary of state may furnish upon request and payment of a fee of twenty dollars ($20.00) a certificate of good standing indicating that registered limited liability partnership is registered in good standing."

Effective Dates.

Acts 2018, ch. 575, § 42. March 16, 2018.

61-1-1002. Registered office — Registered agent.

(a) Each registered limited liability partnership, including foreign registered limited liability partnerships, must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business in this state; and

(2) A registered agent, who may be a partner or any other individual who resides in this state, a domestic corporation, a not-for-profit domestic corporation, a registered limited liability partnership, a limited liability company, or a foreign corporation, not-for-profit foreign corporation, qualified foreign registered limited liability partnership, or limited liability company authorized to transact business in this state. The registered agent must maintain a business office that is identical with the registered office. The registered agent may be designated by title.

(b) If a registered agent resigns or is unable to perform such agent's duties, the registered limited liability partnership shall promptly designate another registered agent to the end that it shall at all times have a registered agent in this state.

(c) A registered limited liability partnership may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) The name of the registered limited liability partnership;

(2) If the current registered office is to be changed, the street address of the new registered office and the zip code for such office and the county in which the office is located;

(3) If its current registered agent is to be changed, the name or title of its new registered agent; and

(4) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(d) If a registered agent changes the street address of such registered agent's business office, such registered agent may change the street address of the registered office of any registered limited liability partnership for which such registered agent is the registered agent by notifying the registered limited liability partnership in writing of the change and signing (either manually or in facsimile) and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a), and recites that the registered limited liability partnership has been notified of the change.

(e) A registered agent of a registered limited liability partnership may resign such agent's agency appointment by signing and filing with the secretary of state an original statement of resignation accompanied by such agent's certification that such agent has mailed a copy thereof to the principal office of the registered limited liability partnership by certified mail. The statement may include a statement that the registered office is also discontinued.

(f) The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary of state.

History.

Acts 1995, ch. 400, § 9; 2001, ch. 353; T.C.A. § 61-1-144.

Compiler's Notes.

Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2-43; Shan., §§ 3141b2 — 3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53 — 3118a93; Acts 1927, ch. 34, §§ 1 — 3; Code 1932, §§ 7841 — 7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A. (orig. ed.), §§ 61-101 — 61-142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1 — 10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

61-1-1003. Name.

(a) A registered limited liability partnership or foreign registered limited liability partnership name must contain the words "registered limited liability partnership," or the abbreviation "L.L.P." or "LLP" or words or abbreviations of like import in another language; provided, that they are written in roman characters or letters; and provided further, that in the case of a foreign registered limited liability partnership, the name may contain, in lieu of the foregoing, the designations allowed by the jurisdiction in which the foreign registered limited liability partnership was registered.

(b) Except as authorized by subsection (c), the name of a domestic limited liability partnership, and the name of a foreign limited liability partnership that is registered in this state or is applying for registration in this state, shall be distinguishable upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

(c) A domestic or foreign limited liability partnership, or person acting on behalf of a limited liability partnership not yet registered, may apply to the

secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the indistinguishable name applied for, if:

(1) The person holding the right to use the previously filed name described in subsection (b) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state;

(3) The person holding the right to use the previously filed name described in subsection (b) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent; or

(4) In the case of a registered limited liability partnership or a foreign registered limited liability partnership, the name of the partnership is composed solely of the names of the partners in the partnership.

(d) A person may reserve the exclusive use of a registered limited liability partnership or foreign registered limited liability partnership name, including an assumed name, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the registered limited liability partnership name applied for meets the requirements of this section and is available, the secretary of state shall reserve the name for the applicant's exclusive use for a four-month period. Upon the expiration of the four-month period, the same or any other party may apply to reserve the same name.

(e) The owner of a reserved registered limited liability partnership name, including an assumed name, may transfer the reservation to another person by delivering to the secretary of state a notice of the transfer signed by the owner that states the name and address of the transferee.

(f) The reservation of a specific name may be cancelled by filing with the secretary of state a notice, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

History.

Acts 1995, ch. 400, § 9; 2001, ch. 353; T.C.A., § 61-1-145; Acts 2010, ch. 743, §§ 9, 10.

Compiler's Notes.

Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2 — 43; Shan., §§ 3141b2 — 3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53 — 3118a93; Acts 1927, ch. 34, §§ 1 — 3; Code 1932, §§ 7841 — 7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A. (orig. ed.), §§ 61-101 — 61 — 142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1 — 10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

61-1-1004. Activities outside the state — Foreign registered limited liability partnership.

(a) A partnership, including a registered limited liability partnership, formed and existing pursuant to an agreement governed by this chapter, may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country.

(b) It is the intent of the general assembly that the legal existence of a registered limited liability partnership formed and existing pursuant to an agreement governed by this chapter be recognized outside the boundaries of this state and that the laws of this state governing such registered limited liability partnerships transacting business outside this state be granted the protection of full faith and credit under the Constitution of the United States.

(c) The internal affairs of a partnership, including registered limited liability partnerships, formed and existing pursuant to an agreement governed by this chapter, including the liability of partners for debts, obligations and liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of this state.

(d) Before transacting business in this state, a foreign registered limited liability partnership shall comply with any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership is engaged, and file a notice with the secretary of state, on such forms as the secretary of state shall provide, stating:

(1) The name of the partnership;

(2) The jurisdiction the laws of which govern its partnership agreement and under which it is registered as a registered limited liability partnership;

(3) The address of its principal office (and a mailing address such as a post office box if the United States postal service does not deliver to the principal office);

(4) If the partnership's principal office is not located in this state, the address of an office in this state and the name and address of a registered agent for service of process in this state;

(5) A brief statement of the business in which the partnership engages;

(6) Any other information that the partnership determines to include; and

(7) A statement that the partnership is a registered limited liability partnership. Such notice shall be accompanied by a fee of fifty dollars ($50.00) for each partner on the date of filing, subject to a minimum of two hundred fifty dollars ($250) and a maximum of two thousand five hundred dollars ($2,500). Such notice shall be effective for two (2) years from the date of filing, after which time the partnership shall file a new notice.

(e) It is the policy of this state that the internal affairs of foreign registered limited liability partnerships, and the liability of partners for debts, obligations and liabilities of or chargeable to partnerships, shall be subject to and governed by the laws of such other jurisdiction.

(f)(1) A foreign registered limited liability partnership registered to transact business in this state may withdraw from this state by filing with the office of the secretary of state a statement of withdrawal as a foreign registered

limited liability partnership, which shall set forth the information stated in its most recent notice: that the foreign registered limited liability partnership is not transacting business in this state and that it surrenders its registration to transact business in this state; that the foreign registered limited liability partnership revokes the authority of its registered agent in this state to accept service of process and appoints the secretary of state as its agent for service of process in any action, suit, or proceeding based upon any cause of action arising during the time the foreign registered limited liability partnership was registered to transact business in this state; and a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state in the capacity of agent for such registered limited liability partnership.

(2) The statement of withdrawal as a foreign registered limited liability partnership shall be accompanied by a tax clearance for termination or withdrawal relative to such foreign registered limited liability partnership.

(g) A foreign registered limited liability partnership may amend its notice by filing with the secretary of state a statement of amendment containing the name of the partnership, the address of its registered office in this state, and the amendment. The statement of amendment shall be accompanied by a fee of twenty dollars ($20.00).

(h) The secretary of state may furnish upon request and payment of a fee of twenty dollars ($20.00) a certificate of good standing indicating that a foreign registered limited liability partnership has filed a notice pursuant to this section and is in good standing in this state as a foreign registered limited liability partnership.

(i) If the secretary of state determines upon filing of the notice as provided in subsection (d), that a foreign registered limited liability partnership has been transacting business in this state without filing notice for a period of one (1) year or more, then the secretary of state shall also require that the foreign registered limited liability partnership submit a confirmation of good standing relative to such foreign registered limited liability partnership.

History.

Acts 1995, ch. 400, § 9; 1998, ch. 890, § 5; 2001, ch. 353; T.C.A., § 61-1-146; Acts 2010, ch. 741, §§ 50, 51; 2014, ch. 783, § 20.

Compiler's Notes.

Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2 — 43; Shan., §§ 3141b2- 3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53 — 3118a93; Acts 1927, ch. 34, §§ 1 — 3; Code 1932, §§ 7841 — 7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A. (orig. ed.), §§ 61-101 — 61-142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1 — 10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

61-1-1005. Professional registered limited liability partnerships.

Notwithstanding any other law, a partnership engaged in the rendering of professional services may register as a registered limited liability partnership subject to the laws and regulations governing the provision of professional services by partnerships and such other terms and conditions imposed by its governing professional licensing authority. Nothing in this section shall affect the authority of professional licensing authorities, including the state supreme court, to regulate the practice of the professions.

History.
Acts 1995, ch. 400, § 10; 2001, ch. 353; T.C.A. § 61-1-147.

Compiler's Notes.
Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2 — 43; Shan., §§ 3141b2 — 3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53 — 3118a93; Acts 1927, ch. 34, §§ 1 — 3; Code 1932, §§ 7841 — 7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A. (orig. ed.), §§ 61-101 — 61-142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1 — 10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

61-1-1006. Certificate of existence.

(a) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic registered limited liability partnership or a certificate of registration for a foreign registered limited liability partnership registered to transact business in this state.

(b) A certificate of existence or registration sets forth:

(1) The domestic registered limited liability partnership's name or the foreign registered limited liability partnership's name used in this state;

(2) That:

(A) The domestic registered limited liability partnership is a limited liability partnership registered under the laws of this state, and the effective date of the filing of its initial application for registration as a registered limited liability partnership; or

(B) The foreign registered limited liability partnership is a limited liability partnership registered to transact business in this state;

(3) That all fees, taxes and penalties owed to this state have been paid, if:

(A) Payment is reflected in the records of the secretary of state or the department of revenue; and

(B) Nonpayment affects the registration of the domestic or foreign registered limited liability partnership;

(4) Whether or not the registration of a domestic or foreign registered limited liability partnership as such remains effective;

(5) That the certificate of existence or registration is effective as of the date of the issuance of the certificate; and

(6) Other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualifications stated in the certificate, a certificate of existence or registration issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign registered limited liability partnership is registered as a domestic registered limited liability partnership or is registered to transact business in this state as a foreign registered limited liability partnership and is in good standing as far as the records of the secretary of state show.

History.
Acts 2010, ch. 742, § 10.

PART 11

[RESERVED]

PART 12

MISCELLANEOUS PROVISIONS

61-1-1201. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

History.
Acts 2001, ch. 353.

61-1-1202. Short title.

This chapter may be cited as the "Uniform Partnership Act."

History.
Acts 2001, ch. 353.

61-1-1203. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History.
Acts 2001, ch. 353.

61-1-1204. Effective date.

This chapter takes effect on January 1, 2002, the public welfare requiring it.

History.
Acts 2001, ch. 353.

61-1-1205. Repeals.

Effective January 1, 2002, the following acts and parts of acts are repealed: §§ 61-1-101 through and including 61-1-142 of the Uniform Partnership Act as enacted in this state, as amended and in effect immediately before January 1, 2002.

History.
Acts 2001, ch. 353.

61-1-1206. Applicability.

(a) Before January 1, 2002, this chapter governs only a partnership formed:

(1) After January 1, 2002, unless that partnership is continuing the business of a dissolved partnership under § 61-1-129 of the prior Uniform Partnership Act; and

(2) Before January 1, 2002, that elects, as provided by subsection (c), to be governed by this chapter.

(b) After January 1, 2002, this chapter governs all partnerships.

(c) Before January 1, 2002, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one (1) year preceding the partnership's election to be governed by this act, only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

History.
Acts 2001, ch. 353.

61-1-1207. Savings clause.

This chapter does not affect an action or proceeding commenced or right accrued before this chapter takes effect.

History.
Acts 2001, ch. 353.

61-1-1208. Filing fees.

(a) Notwithstanding any other provision of this chapter to the contrary, the secretary of state shall collect the following fees when the documents described in this subsection (a) are delivered to the secretary of state for filing:

Document	Fee
(1) Certificate or conversion of limited liability partnership (including designation of initial registered office and agent)	As provided in § 61-1-1001(c)
(2) Application for use of indistinguishable name	$20.00
(3) Application for reserved name	$20.00
(4) Notice of transfer or cancellation of reserved name	$20.00
(5) Application for or change, cancellation, or renewal of assumed name	$20.00
(6) Statement of change of registered agent or registered office, or both, by limited liability partnership	$20.00
(7) Agent's statement of change of registered office	$5.00 per limited liability partnership, but not less than $20.00
(8) Agent's statement of resignation	$20.00
(9) Amendment to certificate	$20.00

Document	Fee
(10) Notice of registration of foreign limited liability partnership (including designation of initial registered office and agent)	As provided in § 61-1-1004(d)(7)
(11) Application for amended registration of foreign limited liability partnership	$20.00
(12) Certificate of withdrawal	$20.00
(13) Notice of withdrawal of foreign limited liability partnership	$20.00
(14) Annual report and fee (domestic)	As provided in § 61-1-1001(e)
(15) Application for reinstatement following administrative dissolution/revocation	$70.00
(16) Application for certificate of existence, registration or good standing	$20.00
(17) Any statement described in § 61-1-105 that is required or permitted to be filed in the office of the secretary of state	$20.00
(18) Any other document required or permitted to be filed by chapter 1 of this title	$20.00

(b) Notwithstanding any other provision of this chapter to the contrary, the secretary of state shall collect a fee of twenty dollars ($20.00) each time process is served on the secretary of state under chapter 1 of this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.

(c) Notwithstanding any other provision of this chapter to the contrary, the secretary of state shall collect a fee of twenty dollars ($20.00) for copying all filed documents relating to a domestic or foreign limited liability partnership. All such copies will be certified or validated by the secretary of state.

(d) If any statement described in § 61-1-105 is required or permitted by any section in this chapter to be filed in the office of the register of deeds in any county in Tennessee, the register of deeds shall charge the fees specified in § 8-21-1001.

(e) Notwithstanding any other provision of this chapter to the contrary, the secretary of state shall collect a fee of twenty dollars ($20.00) for copying all filed documents relating to a domestic or foreign limited liability partnership or partnership. All such copies will be certified or validated by the secretary of state. A certificate attached or certification affixed to a copy of a document filed by the secretary of state, bearing the secretary of state's signature (which may be in facsimile) and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

History.

Acts 1998, ch. 890, § 6; 2000, ch. 568, § 4; 2001, ch. 353; T.C.A., § 61-1-148; Acts 2010, ch. 742, § 11.

Compiler's Notes.

Former chapter 1, §§ 61-1-101 — 61-1-148, (Acts 1917, ch. 140, §§ 2 — 43; Shan., §§ 3141b2 — 3141b42 (p. 6585-6595) Shan. Supp., §§ 3118a53 — 3118a93; Acts 1927, ch. 34, §§ 1 — 3; Code 1932, §§ 7841 — 7882; mod. C. Supp. 1950, § 7854; Acts 1961, ch. 181, § 1; 1963, ch. 136, § 1; T.C.A. (orig. ed.), §§ 61-101 — 61-142; Acts 1982, ch. 773, § 1; Acts 1995 ch. 400, §§ 1 — 10; 1998, ch. 890, §§ 5, 6; 2000, ch. 568, § 4) was deleted and replaced by Acts 2001, ch. 353 effective January 1, 2002.

CHAPTER 2

REVISED UNIFORM LIMITED PARTNERSHIP ACT

Part 1. General Provisions

Section

61-2-101. Chapter definitions.
61-2-102. Name of partnership.
61-2-103. Reservation of name.
61-2-104. Registered office — Registered agent.
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61-2-201. Execution required.
61-2-202. Amendment generally.
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61-2-204. Execution generally.
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61-2-206. Filing — Recording — Fee.
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61-2-806. Unknown claims against dissolved limited partnership — Notice — Limitations.

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61-2-907. Doing business without registration — Penalty.
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Part 11. Filing with Secretary of State

61-2-1101. Requirements generally.
61-2-1102. Forms.
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61-2-1104. Effective time and date — Delays — Registered agent and office.
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61-2-1201. Construction.
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61-2-1203. Severability.
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61-2-1205. Rules of law and equity.
61-2-1206. Prior law.
61-2-1207. Fees.
61-2-1208. Reserved power of state of Tennessee to alter or repeal chapter.

Section
61-2-1209. Certificate of existence.

PART 1

GENERAL PROVISIONS

61-2-101. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in § 61-2-201, and the certificate as amended;

(2) "Confirmation of good standing" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that at the time such confirmation is issued a limited partnership or a foreign limited partnership is current on all taxes and penalties to the satisfaction of the commissioner;

(3) "Contribution" means any cash, property, services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner;

(4) "Court of record" means a court of equity jurisdiction in the county where the partnership maintains its registered office, or if it maintains no registered office in any county, then in a court of equity jurisdiction in Davidson County;

(5) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in § 61-2-402;

(6) "Foreign limited partnership" includes a partnership formed under the laws of any jurisdiction other than the state of Tennessee and having as partners one (1) or more general partners and one (1) or more limited partners;

(7) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and is so named in the certificate of limited partnership or similar instrument under which the limited partnership is organized, if so required;

(8) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner as provided in §§ 61-2-201 and 61-2-301, or, in the case of a foreign limited partnership, in accordance with the laws of the jurisdiction under which the limited partnership is organized, if so required;

(9) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two (2) or more persons under the laws of the state of Tennessee, and having one (1) or more general partners and one (1) or more limited partners;

(10) "Liquidating trustee" means a person, other than a general partner, but including a limited partner, carrying out the winding up of a limited partnership;

(11) "Partner" means a limited or general partner;

(12) "Partnership agreement" means any agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business. A written partnership agreement:

(A) May provide that a person shall be admitted as a limited partner of a limited partnership, or shall become an assignee of a partnership interest or other rights or powers of a limited partner to the extent assigned, and shall become bound by the partnership agreement:

(i) If such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) executes the partnership agreement or any other writing evidencing the intent of such person to become a limited partner or assignee; or

(ii) Without such execution, if such person (or a representative authorized by such person orally, in writing or by other action such as payment for a partnership interest) complies with the conditions for becoming a limited partner or assignee as set forth in the partnership agreement or any other writing and requests (orally, in writing or by other action such as payment for a partnership interest) that the records of the limited partnership reflect such admission or assignment; and

(B) Shall not be unenforceable by reason of its not having been signed by a person being admitted as a limited partner or becoming an assignee as provided in subdivision (12)(A), or by reason of its having been signed by a representative as provided in this title;

(13) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;

(14) "Person" means a natural person, a foreign or domestic partnership (whether general or limited), trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity; and

(15) "Tax clearance for termination or withdrawal" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that a limited partnership or a foreign limited partnership has filed all applicable reports, including, but not limited to, a final report, and has paid all fees, penalties and taxes as required by the revenue laws of this state.

History.

Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 1-3, 85; 2010, ch. 741, § 52; 2011, ch. 99, § 19.

Compiler's Notes.

Former §§ 61-2-101 — 61-2-130 (Acts 1919, ch. 120, §§ 1-26, 28-31; Code 1932, §§ 7883-7912; Shan. Supp. §§ 3141a1-3141a26, 3141a28-3141a31; Acts 1983, ch. 21, § 1; 1984, ch. 648, § 1; 1985, ch. 1, § 1; T.C.A. (orig. ed.), §§ 61-201 — 61-229), concerning Uniform Limited Partnership Act, were repealed by Acts 1988, ch. 922, § 1, effective January 1, 1989.

Cross-References.

Effective date and extended effective date, § 61-2-1204.

Equity participations, title 47, ch. 24.

Prior law, § 61-2-1206.

Textbooks.

Gibson's Suits in Chancery (7th ed., Inman), § 412.

Tennessee Forms (Robinson, Ramsey and Harwell), Nos. 6-301 — 6-303.

Tennessee Jurisprudence, 20 Tenn. Juris., Partnership, §§ 3, 25.

Law Reviews.

Gray Power in the Gray Area Between Employer and Employee: The Applicability of the ADEA to Members of Limited Liability Companies, 51 Vand. L. Rev. 429 (1998).

Removal of General Partners: A Method of Intrapartnership Dispute Resolution for Limited Partnerships (Janet L. Eifert), 39 Vand. L. Rev. 1407 (1986).

The Revised Uniform Partnership Act in Tennessee (Richard Spore), 37 No. 8 Tenn. B.J. 30 (2001).

Where There's a Will: The 95% family-owned test for family limited partnerships (Dan Holbrook), 37 No. 1 Tenn. B.J. 31 (2001).

When a Discount Isn't a Bargain: Debunking the Myths Behind Family Limited Partnerships (Katharine D. Black, Stephen T. Black, and Michael D. Black), 32 U. Mem. L. Rev. 245 (2002).

Attorney General Opinions.

Health facility certificate of need, OAG 89-38, 1989 Tenn AG LEXIS 19 (3/27/89).

NOTES TO DECISIONS

Analysis

1. Effect of Failure to Comply.
2. Evidence of Limited Partnership.

1. Effect of Failure to Comply.

A failure to comply with the statutory requirements for establishing a limited partnership, such as recording, does not void the creation of an association between the partners, but does preclude those partners from claiming the status of limited partners when dealing with third parties who are without notice of the limited liability due to a failure to record. Grenada Bank v. Willey, 705 F.2d 176, 1983 U.S. App. LEXIS 28757 (6th Cir. Tenn. 1983), cert. denied, 464 U.S. 849, 104 S. Ct. 158, 78 L. Ed. 2d 145, 1983 U.S. LEXIS 1515 (1983).

2. Evidence of Limited Partnership.

Because company lacked the statutory requisites of a limited partnership, namely, a valid certificate, and agreement or understanding between the alleged partners and at least one limited partner, bankruptcy debtor did not qualify as a limited partner. In re Taylor & Assocs., L.P., 249 B.R. 448, 1998 Bankr. LEXIS 1926 (Bankr. E.D. Tenn. 1998), aff'd, Bush v. Taylor (In re Taylor & Assocs., L.P.), 249 B.R. 474, 1998 U.S. Dist. LEXIS 22895 (E.D. Tenn. 1998).

Although a decedent attempted to create a partnership by filing the certificates, as the decedent was the sole party involved, the decedent failed to create an actual partnership. Tanner v. Whiteco, L.P., 337 S.W.3d 792, 2010 Tenn. App. LEXIS 337 (Tenn. Ct. App. May 17, 2010), appeal denied, — S.W.3d —, 2010 Tenn. LEXIS 1130 (Tenn. Nov. 18, 2010).

61-2-102. Name of partnership.

The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Shall contain the words "Limited Partnership" or the abbreviation "L.P.";

(2) May contain the words "association," "club," "company," "foundation," "fund," "institute," "society," "union," "syndicate," "limited," "trust," or abbreviations of like import, but shall not contain the words "corporation" or "incorporated" or abbreviations of like import;

(3) May contain the name of a partner; and

(4)(A) Except as authorized by subdivision (4)(B), must be such as to distinguish it upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law;

(B) A limited partnership, or person acting on behalf of a limited partnership not yet registered, may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subdivision (4)(A). The secretary of state shall authorize use of the indistinguishable name applied for, if:

(i) The person holding the right to use the previously filed name described in subdivision (4)(A) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(ii) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(iii) The person holding the right to use the previously filed name described in subdivision (4)(A) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

History.

Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 4, 5; 1994, ch. 868, §§ 10, 11; 2010, ch. 743, §§ 11, 12.

Compiler's Notes.

Former §§ 61-2-101 — 61-2-130 (Acts 1919, ch. 120, §§ 1-26, 28-31; Code 1932, §§ 7883-7912; Shan. Supp. §§ 3141a1-3141a26, 3141a28-3141a31; Acts 1983, ch. 21, § 1; 1984, ch. 648, § 1; 1985, ch. 1, § 1; T.C.A. (orig. ed.), §§ 61-201—61-229), concerning Uniform Limited Partnership Act, were repealed by Acts 1988, ch. 922, § 1, effective January 1, 1989.

Cross-References.

Limited liability companies, title 48, chs. 201-248.

Registration fee for articles, § 8-21-1001.

Textbooks.

Tennessee Forms (Robinson, Ramsey and Harwell), Nos. 6-401, 6-501.

Law Reviews.

The Tennessee Recording System (Toxey H. Sewell), 50 Tenn. L. Rev. 1 (1982).

The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

DECISIONS UNDER PRIOR LAW

1. Special Partner's Liability.

Special partners became liable to creditors as general partners, where special partnership statute was not complied with; and, where such a partner, by will, directed his executors to continue in the business, he thereby made his estate liable to a general creditor on a firm note executed after his death. Ussery v. Crusman, 47 S.W. 567, 1898 Tenn. Ch. App. LEXIS 40 (1898).

Where special partner became liable as general partner, for noncompliance with special partnership statute, and held partnership note for its debt to him, he could not offset the note against his debt on account to the firm, in a suit by firm's assignee in insolvency. Savage v. Carney, 47 S.W. 571, 1898 Tenn. Ch. App. LEXIS 41 (1898).

61-2-103. Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited partnership under this chapter and to adopt that name;

(2) Any domestic limited partnership or any foreign limited partnership registered in the state of Tennessee which, in either case, intends to adopt that name;

(3) Any foreign limited partnership intending to register in the state of Tennessee and to adopt that name; and

(4) Any person intending to organize a foreign limited partnership and intending to have it registered in the state of Tennessee and to adopt that name.

(b) The reservation of a specified name shall be made by a person filing with the secretary of state an application, executed by the applicant, which may be either a signed copy, specifying the name to be reserved and the name and address of the applicant. If the secretary of state finds that the name applied for meets the requirements of § 61-2-102 and is available for use by a domestic or foreign limited partnership, he shall reserve the name for the applicant's exclusive use for a nonrenewable four-month period. The right to the exclusive use of a reserved name may be transferred to any other person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be cancelled by filing with the secretary of state a notice, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 6.

Compiler's Notes.
Former §§ 61-2-101 — 61-2-130 (Acts 1919, ch. 120, §§ 1-26, 28-31; Code 1932, §§ 7883-7912; Shan. Supp. §§ 3141a1-3141a26, 3141a28-3141a31; Acts 1983, ch. 21, § 1; 1984, ch. 648, § 1; 1985, ch. 1, § 1; T.C.A. (orig. ed.), §§ 61-201—61-229), concerning Uniform Limited Partnership Act, were repealed by Acts 1988, ch. 922, § 1, effective January 1, 1989.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), Nos. 6-501 — 6-503.

61-2-104. Registered office — Registered agent.

(a) Each limited partnership must continuously maintain in this state:

(1) A registered office, which may but need not be a place of its business in this state; and

(2) A registered agent, which agent may be either an individual resident of this state whose business office is identical with the limited partnership's registered office, or a domestic corporation or a foreign corporation authorized to transact business in this state having a business office identical with such registered office.

(b) A limited partnership may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) The name of the limited partnership;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office and zip code for such office, and the county in which the office is located;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent; and

(6) That after the change or changes are made, the street address of its registered office and the business office of its registered agent will be identical.

(c) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any limited partnership for which he is the registered agent by notifying the limited partnership

in writing of the change and signing (either manually or in facsimile) and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (b) and recites that the limited partnership has been notified of the change.

(d) A registered agent may resign his agency appointment by signing and filing with the secretary of state an original statement of resignation accompanied by his certification that he has mailed a copy thereof to the principal office of the limited partnership by certified mail. The statement may include a statement that the registered office is also discontinued. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary of state.

(e) If a registered agent resigns or is unable to perform his duties, the designating limited partnership shall promptly designate another registered agent to the end that it shall at all times have a registered agent in this state.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 7.

Compiler's Notes.
Former §§ 61-2-101 — 61-2-130 (Acts 1919, ch. 120, §§ 1-26, 28-31; Code 1932, §§ 7883-7912; Shan. Supp. §§ 3141a1-3141a26, 3141a28-3141a31; Acts 1983, ch. 21, § 1; 1984, ch. 648, § 1; 1985, ch. 1, § 1; T.C.A. (orig. ed.), §§ 61-201—61-229), concerning Uniform Limited Partnership Act, were repealed by Acts 1988, ch. 922, § 1, effective January 1, 1989.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), Nos. 6-601 — 6-604.

61-2-105. Service on partnership generally.

(a) A limited partnership's registered agent is the limited partnership's agent for service of process, notice or demand required or permitted by law to be served on the limited partnership.

(b) Whenever a domestic or foreign limited partnership authorized to do business in this state fails to appoint or maintain a registered agent in this state, whenever its registered agent cannot be found with reasonable diligence, whenever a foreign limited partnership shall transact business or conduct affairs in this state without first submitting an application for registration with the secretary of state, or whenever the registration of a foreign limited partnership shall have been cancelled, then the secretary of state shall be an agent of such limited partnership upon whom any such process, notice or demand may be served.

(c) Whenever a domestic or foreign limited partnership authorized to do business in this state is an employer within the meaning of the Workers' Compensation Law, compiled in title 50, chapter 6, and such limited partnership is, for the purpose of such workers' compensation, self-insured or a part of a self-insurance pool as provided in title 50, chapter 6, part 4, such limited partnership shall, for workers' compensation actions only, be required to appoint the commissioner of commerce and insurance and his chief deputy, or their successors, as its true and lawful attorneys upon either of whom all lawful process in any such action or legal proceeding may be served, as is required of insurance companies by § 56-2-103.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a limited partnership.

History.
Acts 1988, ch. 922, § 1.

Compiler's Notes.
Former §§ 61-2-101 — 61-2-130 (Acts 1919, ch. 120, §§ 1-26, 28-31; Code 1932, §§ 7883-7912; Shan. Supp. §§ 3141a1-3141a26, 3141a28-3141a31; Acts 1983, ch. 21, § 1; 1984, ch. 648, § 1; 1985, ch. 1, § 1; T.C.A. (orig. ed.), §§ 61-201—61-229), concerning Uniform Limited Partnership Act, were repealed by Acts 1988, ch. 922, § 1, effective January 1, 1989.

61-2-106. Service on secretary of state.

(a) Service on the secretary of state, when the secretary of state is an agent for a domestic or foreign limited partnership as provided in § 61-2-105(b), of any process, notice or demand shall be made by delivering to the secretary of state the original and one (1) copy of such process, notice or demand, duly certified by the clerk of the court in which the suit or action is pending or brought, together with the proper fee. A statement which identifies which of the grounds (as listed in § 61-2-105(b)), for service on the secretary of state is applicable, must be included. The secretary of state shall endorse the time of receipt upon the original and copy and immediately shall send the copy, along with a written notice that service of the original was also made, by registered or certified mail, with return receipt requested, addressed to such limited partnership at its registered office or principal office (or designated alternative mailing address) as shown in the records on file in the secretary of state's office or as shown in the official registry of the state or country in which such limited partnership is formed. If none of the previously mentioned addresses are available to the secretary of state, service may be made to any one (1) of the general partners at the address set forth in the certificate of limited partnership. The secretary of state may require the plaintiff (or complainant as the case may be) or the plaintiff's attorney to furnish the latter address.

(b) The refusal or failure of such limited partnership to accept delivery of the registered or certified mail provided for in subsection (a), or the refusal or failure to sign the return receipt, shall not affect the validity of such service, and any such limited partnership refusing or failing to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of any process, notice or demand contained therein.

(c) When the registered or certified mail return receipt is received by the secretary of state or when a limited partnership refuses or fails to accept delivery of the registered or certified mail and it is returned to the secretary of state, the secretary of state shall forward the receipt or such refused or undelivered mail to the clerk of the court in which the suit or action is pending, together with the original process, notice or demand, a copy of the notice the secretary of state sent to the defendant limited partnership and the affidavit setting forth compliance with this section. Upon receipt thereof, the clerk shall copy the affidavit on the rule docket of the court and shall mark it, the receipt or refused or undelivered mail, and the copy of notice as of the day received and place them in the file of the suit or action where the process and pleadings are kept, and such receipt or refused or undelivered mail, affidavit and copy of notice shall be and become a part of the technical record in the suit or action, and thereupon service on the defendant shall be complete. Service made under this section shall have the same legal force and validity as if the service had been made personally in this state.

(d) Subsequent pleadings or papers permitted or required to be served on such defendant domestic or foreign limited partnership may be served on the secretary of state as agent for such defendant limited partnership in the same manner, at the same cost and with the same effect as process, notice or demand are served on the secretary of state as agent for such defendant limited partnership under this section.

(e) No appearance shall be required in the suit or action by the defendant domestic or foreign limited partnership nor shall any judgment be taken against the domestic or foreign limited partnership in less than one (1) month after the date service is completed under this section.

(f) The secretary of state shall keep a record of all processes, notices and demands served upon the secretary of state under this section, which record shall include the time of such service and the action with reference thereto.

History.

Acts 1988, ch. 922, § 1; 1989, ch. 270, § 8; 2014, ch. 783, § 21

Compiler's Notes.

Former §§ 61-2-101 — 61-2-130 (Acts 1919, ch. 120, §§ 1-26, 28-31; Code 1932, §§ 7883-7912; Shan. Supp. §§ 3141a1-3141a26, 3141a28-3141a31; Acts 1983, ch. 21, § 1; 1984, ch. 648, § 1; 1985, ch. 1, § 1; T.C.A. (orig. ed.), §§ 61-201—61-229), concerning Uniform Limited Partnership Act, were repealed by Acts 1988, ch. 922, § 1, effective January 1, 1989.

Cross-References.

Certified mail in lieu of registered mail, § 1-3-111.

61-2-107. Business permitted.

A limited partnership may carry on any business that a partnership without limited partners may carry on, unless otherwise prohibited by law.

History.

Acts 1988, ch. 922, § 1.

Compiler's Notes.

Former §§ 61-2-101 — 61-2-130 (Acts 1919, ch. 120, §§ 1-26, 28-31; Code 1932, §§ 7883-7912; Shan. Supp. §§ 3141a1-3141a26, 3141a28-3141a31; Acts 1983, ch. 21, § 1; 1984, ch. 648, § 1; 1985, ch. 1, § 1; T.C.A. (orig. ed.), §§ 61-201—61-229), concerning Uniform Limited Partnership Act, were repealed by Acts 1988, ch. 922, § 1, effective January 1, 1989.

Law Reviews.

Limited Liability for Limited Partners: An Argument for the Abolition of the Control Rule (Joseph J. Basile, Jr.), 38 Vand. L. Rev. 1199 (1985).

The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

61-2-108. Rights and obligations of partner.

Except as provided in the partnership agreement, a partner may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one (1) or more specific obligations of, provide collateral for, and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 9.

Compiler's Notes.
Former §§ 61-2-101 — 61-2-130 (Acts 1919, ch. 120, §§ 1-26, 28-31; Code 1932, §§ 7883-7912; Shan. Supp. §§ 3141a1-3141a26, 3141a28-3141a31; Acts 1983, ch. 21, § 1; 1984, ch. 648, § 1; 1985, ch. 1, § 1; T.C.A. (orig. ed.), §§ 61-201—61-229), concerning Uniform Limited Partnership Act, were repealed by Acts 1988, ch. 922, § 1, effective January 1, 1989.

61-2-109. Indemnification of partner — Advancement of expenses.

(a)(1) Subject to such standards and restrictions, if any, as are set forth in its partnership agreement, a limited partnership may, and shall have the power to, indemnify and hold harmless any partner or other person from and against any and all claims and demands whatsoever if:

(A) He conducted himself in good faith;

(B) He reasonably believed:

(i) In the case of conduct in his official capacity with the partnership, that his conduct was in its best interests; and

(ii) In all other cases, that his conduct was at least not opposed to its best interests; and

(C) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(2) The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the partner did not meet the standard of conduct described in this section.

(b) Unless limited by its partnership agreement, a partnership shall indemnify a partner who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he is a party because he is or was a partner of the partnership against reasonable expenses incurred by him in connection with the proceeding.

(c)(1) A partnership may pay for or reimburse the reasonable expenses incurred by a partner who is a party to a proceeding in advance of final disposition of the proceeding if:

(A) The partner furnishes the partnership with a written affirmation of his good faith belief that he has met the standard of conduct described in subsection (a);

(B) The partner furnishes the partnership with a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he is not entitled to indemnification; and

(C) A determination is made that the facts then known to those making the determination would not preclude indemnification under this section;

(2) The undertaking required by subdivision (c)(1)(B) must be an unlimited general obligation of the partner but need not be secured and may be accepted without reference to financial ability to make repayment; and

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in subsection (e).

(d) Unless the partnership agreement provides otherwise, a partner of the partnership who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court

considers necessary may order indemnification if it determines:

(1) That the partner is entitled to mandatory indemnification under subsection (b), in which case the court shall also order the partnership to pay the partner's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The partner is fairly and reasonably entitled to indemnification in view of all of the relevant circumstances, whether or not he is entitled to mandatory indemnification under subsection (b).

(e)(1) A partnership may not indemnify a partner under subsection (a) unless authorized in the specific case after a determination has been made that indemnification of the partner is permissible in the circumstances because he has met the standard of conduct set forth in subsection (a).

(2) The determination shall be made:

(A) By the general partners by majority vote of a quorum consisting of partners not at the time parties to the proceeding;

(B) If a quorum cannot be obtained under subdivision (e)(2)(A), by majority vote of a committee duly designated by the general partners (in which designation partners who are parties may participate), consisting solely of two (2) or more partners not at the time parties to the proceeding;

(C) By independent special legal counsel:

(i) Selected by the general partners or its committee in the manner prescribed in subdivision (e)(2)(A) or (e)(2)(B); or

(ii) If a quorum of the partners cannot be obtained under subdivision (e)(2)(A) and a committee cannot be designated under subdivision (e)(2)(B), selected by majority vote of the general partners (in which selection partners who are parties may participate); or

(D) By the limited partners, but those who are at the time parties to the proceeding may not vote on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subdivision (e)(2)(C) to select counsel.

(f) Unless the partnership agreement provides otherwise:

(1) A limited partner of the partnership who is not a general partner is entitled to mandatory indemnification under subsection (b), and is entitled to apply for a court-ordered indemnification under subsection (d), in each case to the same extent as a general partner;

(2) The partnership may indemnify and advance expenses under this part to an officer, employee or agent of the partnership who is not a partner to the same extent as to a partner; and

(3) A partnership may also indemnify and advance expenses to an officer, employee or agent who is not a partner to the extent, consistent with public policy, that may be provided by its partnership agreement, general or specific action of its partners or contract.

(g) A partnership may purchase and maintain insurance on behalf of an individual who is or was a partner, officer, employee or agent of the partner-

ship, or who, while a partner, officer, employee or agent of the partnership, is or was serving at the request of the corporation as a partner, officer, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against the liability asserted against or incurred by him in that capacity or arising from his status as a partner, officer, employee or agent, whether or not the partnership would have power to indemnify him against the same liability under this section.

(h)(1) The indemnification and advancement of expenses granted pursuant to, or provided by, this section shall not be deemed exclusive of any other rights to which a partner, officer, employee or agent seeking indemnification or advancement of expenses may be entitled, whether contained in this section, the partnership agreement, action of partners or an agreement providing for such indemnification; provided, however, that no indemnification may be made to or on behalf of any person if a judgment or other final adjudication adverse to the person establishes his liability:

(A) For any breach of the duty of loyalty to the partnership or its partners;

(B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(C) For any distribution made in violation of the partnership agreement or any section of this chapter.

(2) This part does not limit a partnership's power to pay or reimburse expenses incurred by a partner, officer, employee or agent in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent to the proceeding.

History.
Acts 1988, ch. 922, § 1.

Compiler's Notes.
Former §§ 61-2-101 — 61-2-130 (Acts 1919, ch. 120, §§ 1-26, 28-31; Code 1932, §§ 7883-7912; Shan. Supp. §§ 3141a1-3141a26, 3141a28-3141a31; Acts 1983, ch. 21, § 1; 1984, ch. 648, § 1; 1985, ch. 1, § 1; T.C.A. (orig. ed.), §§ 61-201—61-229), concerning Uniform Limited Partnership Act, were repealed by Acts 1988, ch. 922, § 1, effective January 1, 1989.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), Nos. 6-301, 6-302.

Law Reviews.
The Collection of Debts from Insolvent and Fully-Mortgaged Debtors (John A. Walker, Jr.), 43 Tenn. L. Rev. 399.

NOTES TO DECISIONS

1. Purchase of Partnership Property.
Under the Uniform Limited Partnership Act (repealed 1988), a general partner was not authorized to purchase property of the limited partnership for own purposes without the consent or ratification of the limited partners. Brandt v. BIB Enters., Ltd., 986 S.W.2d 586, 1998 Tenn. App. LEXIS 540 (Tenn. Ct. App. 1998), rehearing denied, Brandt v. Bib Enters., — S.W.3d —, 1998 Tenn. App. LEXIS 629 (Tenn. 1998).

PART 2

CERTIFICATE OF LIMITED PARTNERSHIP

61-2-201. Execution required.

(a) In order to form a limited partnership, one (1) or more persons, but not less than all of the general partners, must execute a certificate of limited partnership. A certificate of limited partnership shall be filed with the secretary of state and set forth:

(1) The name of the limited partnership;

(2) The street address and zip code of the limited partnership's initial registered office, the county in which the office is located, and the name of its initial registered agent at that office as required to be maintained by § 61-2-104;

(3) The street address and zip code of the principal office of the limited partnership (and a mailing address such as a post office box if the United States postal service does not deliver to the principal office);

(4) The name and the business, residence or mailing address of each general partner; and

(5) Any other matters not inconsistent with the partnership agreement which the partners determined to include therein.

(b) The partnership agreement shall not be filed.

(c) A limited partnership is formed at the time of the filing of the initial certificate of limited partnership with the secretary of state or at any later date or time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section. A limited partnership shall have a term of fifty (50) years unless the certificate of limited partnership provides otherwise.

History.

Acts 1988, ch. 922, § 1; 1989, ch. 270, § 10; 1997, ch. 38, § 1; 2014, ch. 783, § 22.

Textbooks.

Tennessee Jurisprudence, 20 Tenn. Juris., Partnership, § 3.

Tennessee Forms (Robinson, Ramsey and Harwell), No. 6-401.

Law Reviews.

The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

Attorney General Opinions.

Taxation of interest in limited partnership, OAG 89-75, 1989 Tenn. AG LEXIS 57 (5/4/89).

NOTES TO DECISIONS

1. Evidence of Limited Partnership.

Because company lacked the statutory requisites of a limited partnership, namely, a valid certificate, and agreement or understanding between the alleged partners and at least one limited partner, bankruptcy debtor did not qualify as a limited partner. In re Taylor & Assocs., L.P., 249 B.R. 448, 1998 Bankr. LEXIS 1926 (Bankr. E.D. Tenn. 1998), aff'd, Bush v. Taylor (In re Taylor & Assocs., L.P.), 249 B.R. 474, 1998 U.S. Dist. LEXIS 22895 (E.D. Tenn. 1998).

61-2-202. Amendment generally.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto with the secretary of state. A certificate of amendment shall set forth:

(1) The name of the limited partnership; and

(2) The amendment to the certificate.

(b) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made, or that any matter described in a certificate of limited partnership has changed, making the certificate false in any material respect, shall promptly amend the certificate.

(c) Notwithstanding the requirements of subsection (b), no later than sixty (60) days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed by a general partner:

(1) The admission of a new general partner;

(2) The withdrawal of a general partner; or

(3) A change in the name of the limited partnership or a change in the address of the limited partnership's principal office.

(d) A change in the address of the registered office or a change in the name of the registered agent of the limited partnership can be made by filing a certificate of amendment pursuant to this section or by filing a statement of change pursuant to § 61-2-104(b) and (c). The change must be filed no later than sixty (60) days after the registered office or registered agent changes.

(e) A certificate of limited partnership may be amended at any time for any other proper purpose that the general partners may determine.

(f) Unless otherwise provided in this chapter or in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the secretary of state.

(g) If, after the dissolution of a limited partnership, but prior to the filing of a certificate of cancellation as provided in § 61-2-203:

(1) A certificate of limited partnership has been amended to reflect the withdrawal of all general partners of a limited partnership, the certificate of limited partnership shall be amended to set forth the name and the business, residence or mailing address of each person winding up the limited partnership's affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment; or

(2) A person shown on a certificate of limited partnership as a general partner is not winding up the limited partnership's affairs, the certificate of limited partnership shall be amended to add the name and the business, residence or mailing address of each person winding up the limited partnership's affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment.

History.

Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 11, 12.

Textbooks.

Tennessee Forms (Robinson, Ramsey and Harwell), Nos. 6-402, 6-1001.

61-2-203. Cancellation generally — Continuation of limited partnership after cancellation of certificate.

(a) A certificate of limited partnership shall be cancelled upon the dissolu-

tion and the completion of winding up of the limited partnership or at any other time there are no limited partners.

(b) A certificate of cancellation shall be filed with the secretary of state and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;

(3) The reason for filing the certificate of cancellation;

(4) The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information which the person filing the certificate of cancellation determines necessary to include.

(c) The secretary of state shall file the certificate of cancellation if the secretary of state finds that the certificate of cancellation:

(1) Complies with subsection (b); and

(2) Is accompanied by a tax clearance for termination or withdrawal relative to such limited partnership; provided, however, that a confirmation of good standing shall be required in lieu of the tax clearance for termination or withdrawal if the limited partnership indicates in the certificate of cancellation that the limited partnership is converting to another entity type.

History.

Acts 1988, ch. 922, § 1; 1989, ch. 270, § 13; 1999, ch. 363, § 1; 2009, ch. 354, § 2; 2010, ch. 741, § 53.

Textbooks.

Tennessee Forms (Robinson, Ramsey and Harwell), No. 6-1001.

61-2-204. Execution generally.

(a) Each certificate required by this part to be filed with the secretary of state shall be executed in the following manner:

(1) An initial certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one (1) general partner and by each other general partner designated in the certificate of amendment as a new general partner, but if the certificate of amendment reflects the withdrawal of a general partner as a general partner, it need not be signed by that former general partner;

(3) A certificate of cancellation must be signed by all general partners or, if the general partners are not winding up the limited partnership's affairs, then by all liquidating trustees; provided, however, that if the limited partners are winding up the limited partnership's affairs, a certificate of cancellation need be signed only by a majority of the limited partners;

(4) If a domestic limited partnership is filing a certificate of merger, the certificate of merger must be signed by at least one (1) general partner of the domestic limited partnership, or if the certificate of merger is being filed by an other business entity (as defined in § 61-2-211(a)), the certificate of merger must be signed by a person authorized by such other business entity; and

(5) All other certificates must be signed by at least one (1) general partner.

(b) Unless otherwise provided in the partnership agreement, any person

may sign any certificate or amendment thereof or enter into a partnership agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into a partnership agreement or amendment thereof must be in writing, but need not be sworn to, verified or acknowledged, and need not be filed in the office of the secretary of state, but if in writing, must be retained by a general partner.

(c) The execution of a certificate by a general partner constitutes an oath or affirmation, under the penalties of perjury, that, to the best of the general partner's knowledge and belief, the facts stated therein are true.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 14-18; 2011, ch. 99, § 20.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), No. 6-1001.

61-2-205. Execution, amendment, or cancellation by court order.

(a) If a person required by § 61-2-204 to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition a court of record to direct the execution of the certificate. If the court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate.

(b) If a person required to execute a partnership agreement, amendment or cancellation thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the court of record to direct the execution of the partnership agreement, amendment or cancellation thereof. If the court finds that the partnership agreement, amendment or cancellation thereof should be executed and that any person so designated has failed or refused to do so, it shall enter an order granting appropriate relief.

History.
Acts 1988, ch. 922, § 1.

61-2-206. Filing — Recording — Fee.

(a) The original signed copy of the certificate of limited partnership and of any certificate of amendment or cancellation (or of any judicial decree of amendment or cancellation) and of any certificate of merger or consolidation and of any restated certificate shall be filed with the secretary of state in accordance with part 11 of this chapter.

(b) Each certificate required by this part to be filed with the secretary of state shall also be recorded in the office of the register of deeds in the county in which the limited partnership is to have its principal office if such principal office is in Tennessee; provided, however, that when such certificate is filed by the secretary of state, the matters covered by such certificate shall be effective as stated therein, and a copy of such certificate certified by the secretary of state shall be conclusive evidence of the matters covered therein. The register of deeds may charge five dollars ($5.00) plus fifty cents (50¢) per page in excess of five (5) pages for such filing.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 19, 20.

61-2-207. Liability for false statement.

(a) If any certificate of limited partnership or certificate of amendment or cancellation contains a materially false statement, one who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

(1) Any general partner who executes the certificate and knew or should have known the statement to be false in any material respect at the time the certificate was executed; and

(2) Any general partner who thereafter knows that any arrangement or other fact described in the certificate is false in any material respect or has changed, making the statement false in any material respect, if that general partner had sufficient time to amend or cancel the certificate, or to file a petition for its amendment or cancellation, before the statement was reasonably relied upon.

(b) No general partner shall have any liability for failing to cause the amendment or cancellation of a certificate to be filed or failing to file a petition for its amendment or cancellation pursuant to subsection (a) if the certificate of amendment, certificate of cancellation or petition is filed within ninety (90) days of when that general partner knew or should have known that the statement in the certificate was false in any material respect.

History.
Acts 1988, ch. 922, § 1.

61-2-208. Notice.

The fact that a certificate of limited partnership is on file with the secretary of state is notice that the partnership is a limited partnership and is notice of all other facts set forth therein which are required to be set forth in a certificate of limited partnership by § 61-2-201(a)(1)-(4) and by § 61-2-202(g).

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 21; 2011, ch. 99, § 21.

61-2-209. Delivery to partners.

Upon the return by the secretary of state pursuant to § 61-2-1106 of a certificate marked "Filed," the general partners shall promptly deliver or mail a copy of the certificate to each limited partner, if the partnership agreement so requires.

History.
Acts 1988, ch. 922, § 1.

61-2-210. Integration and restatement.

(a) A limited partnership may, whenever desired, integrate into a single instrument all of the provisions of its certificate of limited partnership which

are then in effect and operative as a result of there having theretofore been filed with the secretary of state one (1) or more certificates or other instruments pursuant to any of the sections referred to in this part, and it may at the same time also further amend its certificate of limited partnership by adopting a restated certificate of limited partnership.

(b) If the restated certificate of limited partnership merely restates and integrates but does not further amend the initial certificate of limited partnership, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this part, it shall be designated in its heading as a "Restated Certificate of Limited Partnership" and shall be executed by a general partner, but if the restated certificate reflects the withdrawal of a general partner as a general partner, such restated certificate of limited partnership need not be signed by that former general partner, and shall be filed as required by § 61-2-206 with the secretary of state. If the restated certificate restates and integrates and also further amends in any respect the certificate of limited partnership, as theretofore amended or supplemented, it shall be designated in its heading as an "Amended and Restated Certificate of Limited Partnership" and shall be executed by at least one (1) general partner, and by each other general partner designated in the restated certificate of limited partnership as a new general partner, and filed as required by § 61-2-206 with the secretary of state.

(c) A restated certificate of limited partnership shall state the limited partnership's present name and the date of filing of its original certificate of limited partnership with the secretary of state and the future effective date or time (which shall be a date or time certain), of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If the restated certificate only restates and integrates and does not further amend the limited partnership's certificate of limited partnership as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well. A restated certificate of limited partnership must contain all the information required in the original certificate of limited partnership as set out in § 61-2-201, except that the current instead of the initial registered agent and registered office must be stated.

(d) Upon the filing of the restated certificate of limited partnership with the secretary of state, or upon the future effective date or time of a restated certificate of limited partnership as provided for therein, the initial certificate of limited partnership, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of limited partnership, including any further amendment or changes made thereby, shall be the certificate of limited partnership of the limited partnership, but the original effective date of formation shall remain unchanged.

(e) Any amendment or change effected in connection with the restatement and integration of the certificate of limited partnership shall be subject to any other provisions of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 22, 23.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), Nos. 6-403, 6-404.

61-2-211. Merger.

(a) As used in this section, "other business entity" means a corporation, limited liability company, business trust or association, a real estate investment trust, a common law trust, or an unincorporated business, including a partnership (whether general or limited, but excluding a domestic limited partnership).

(b)(1) Pursuant to an agreement of merger, a domestic limited partnership may merge with or into one (1) or more domestic limited partnerships or other business entities formed or organized under the laws of this state or any other state or the United States or any foreign country or other foreign jurisdiction, with such domestic limited partnership or other business entity as the agreement shall provide being the surviving or resulting domestic limited partnership or other business entity. Unless otherwise provided in the partnership agreement, a merger shall be approved by each domestic limited partnership which is to merge:

(A) By all general partners; and

(B) By the limited partners or, if there is more than one (1) class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

(2) Notwithstanding prior approval, an agreement of merger may be terminated prior to filing of a certificate of merger with the secretary of state or amended pursuant to a provision for such termination or amendment contained in the agreement of merger.

(c) If a domestic limited partnership is merging under this section, the domestic limited partnership or other business entity surviving or resulting in or from the merger shall file a certificate of merger in the office of the secretary of state. The certificate of merger shall state:

(1) The name, jurisdiction and date of formation or organization of each of the domestic limited partnerships or other business entities which is to merge;

(2) That an agreement of merger has been approved and executed by each of the domestic limited partnerships or other business entities which is to merge;

(3) The name of the surviving or resulting domestic limited partnership or other business entity;

(4) The future effective date or time (which shall be a date or time certain and which shall comply with § 61-2-1104(b)) of the merger if it is not to be effective upon the filing of the certificate of merger;

(5) That the agreement of merger is on file at a place of business of the surviving or resulting domestic limited partnership or other business entity, and shall state the address of such entity;

(6) That a copy of the agreement of merger will be furnished by the surviving or resulting domestic limited partnership or other business entity, on request and without cost, to any partner of any domestic limited partnership or any person holding an interest in any other business entity which is to merge; and

(7) If the surviving or resulting entity is not a domestic limited partnership or corporation organized under the laws of this state a statement that such surviving or resulting other business entity agrees that it may be served with process in the state in any action, suit or proceeding for the enforcement of any obligation of any domestic limited partnership which is to merge, irrevocably appointing the secretary of state as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the secretary of state. In the event of service hereunder upon the secretary of state, the procedures set forth in § 61-2-106 shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the secretary of state with the address specified in the certificate of merger provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the secretary of state, and the secretary of state shall notify such surviving or resulting other business entity at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 61-2-106.

(d) Unless a future effective date or time pursuant to § 61-2-1104(b) is provided in a certificate of merger, in which event a merger shall be effective at any such future effective date or time, a merger shall be effective upon the filing in the office of the secretary of state of a certificate of merger.

(e) A certificate of merger shall act as a certificate of cancellation for a domestic limited partnership which is not the surviving or resulting entity in the merger.

(f) When any merger has become effective under this section, for all purposes of the laws of the state, all of the rights, privileges and powers of each of the domestic limited partnerships and other business entities that have merged, and all property, real, personal and mixed, and all debts due to any of the domestic limited partnerships and other business entities, as well as all other things and causes of action belonging to each of such domestic limited partnerships and other business entities, shall be vested in the surviving or resulting domestic limited partnership or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited partnership or other business entity as they were of each of the domestic limited partnerships and other business entities that have merged, and the title to any real property vested by deed or otherwise in any of such domestic limited partnerships and other business entities, shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of any of the domestic limited partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the domestic limited partnerships and other business entities that have merged shall thenceforth attach to the surviving or resulting domestic limited partnership or other business entity, and may be enforced

against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving or resulting entity in the merger, shall not require such domestic limited partnership to wind up its affairs under § 61-2-803 or pay its liabilities and distribute its assets under § 61-2-804.

(g) Each certificate of merger required by this part to be filed with the secretary of state shall also be recorded in the office of the register of deeds in the county in which the limited partnership is to have its principal office and in each county in which a limited partnership which is a party to such merger had its principal office; provided, that when such certificate is filed by the secretary of state, the matters covered by such certificate shall be effective as stated therein, and a copy of such certificate certified by the secretary of state shall be conclusive evidence of the matters covered therein. The register of deeds may charge five dollars ($5.00) plus fifty cents (50¢) per page in excess of five (5) pages for such filing.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 24, 25; 1994, ch. 868, § 12.

Cross-References.
Limited liability companies, title 48, chs. 201-249.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), No. 6-701.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

PART 3

LIMITED PARTNERS

61-2-301. Admission of limited partners.

(a) In connection with the formation of a limited partnership, a person acquiring a partnership interest as a limited partner is admitted as a limited partner of the limited partnership upon the latter to occur of:

(1) The formation of the limited partnership; or

(2) The time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide, when the person's admission is reflected in the records of the limited partnership.

(b) After the formation of a limited partnership, a person acquiring a partnership interest as a limited partner is admitted as a limited partner of the limited partnership:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, at the time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the consent of all partners and when the person's admission is reflected in the records of the limited partnership; or

(2) In the case of an assignee of a partnership interest, as provided in § 61-2-704 and at the time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide,

when any such person's permitted admission is reflected in the records of the limited partnership.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 26.

NOTES TO DECISIONS

Analysis

1. Generally.
2. Evidence of Limited Partnership.

1. Generally.
An analysis of T.C.A. § 61-2-301 reveals people wanting to form a limited partnership cannot just stumble into one. The statutory requirements for becoming a limited partner are significant; the benefit of limited liability exacts a price. Taylor v. Bush (In re Taylor & Assocs., L.P.), 249 B.R. 431, 1997 U.S. Dist. LEXIS 23765 (E.D. Tenn. 1997).

2. Evidence of Limited Partnership.
Evidence supporting the existence of a limited partnership included a filed certificate, an EIN, a bank account, correspondence, billing records, checks and a pervasive use of the putative limited partnership's name. Taylor v. Bush (In re Taylor & Assocs., L.P.), 249 B.R. 431, 1997 U.S. Dist. LEXIS 23765 (E.D. Tenn. 1997).

Although there was evidence supporting the existence of a limited partnership, circumstantial evidence of a limited partnership does not ipso facto create a limited partnership. Taylor v. Bush (In re Taylor & Assocs., L.P.), 249 B.R. 431, 1997 U.S. Dist. LEXIS 23765 (E.D. Tenn. 1997).

All signs and steps of a limited partnership must form a straight line and the presence of statutory prerequisites is mandatory evidence to support the existence of a limited partnership. Taylor v. Bush (In re Taylor & Assocs., L.P.), 249 B.R. 431, 1997 U.S. Dist. LEXIS 23765 (E.D. Tenn. 1997).

61-2-302. Liability for obligations — Control of business.

(a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership, unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner does participate in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) by virtue of his possessing or exercising one (1) or more of the following powers or having or acting in one (1) or more of the following capacities:

(1) To be an independent contractor for or to transact business with, including being a contractor for, or to be an agent or employee of, the limited partnership or a general partner, or to be an officer, director or stockholder of a corporate general partner, or to be a partner of a partnership that is a general partner of the limited partnership, or to be a fiduciary or beneficiary of an estate or trust which is a general partner;

(2) To consult with or advise a general partner with respect to any matter, including the business of the limited partnership;

(3) To act as surety, guarantor or endorser for the limited partnership or a general partner, to guarantee or assume one (1) or more obligations of the limited partnership or a general partner, to borrow money from the limited partnership or a general partner, to lend money to the limited partnership or a general partner, or to provide collateral for the limited partnership or a

general partner;

(4) To call, request or attend or participate at a meeting of the partners or the limited partners;

(5) To wind up a limited partnership pursuant to § 61-2-803;

(6) To take any action required or permitted by law to bring, pursue or settle or otherwise terminate a derivative action in the right of the limited partnership;

(7) To serve on a committee of the limited partnership or the limited partners;

(8) To act or cause the taking or refraining from the taking of any action, including by proposing, approving, consenting or disapproving, by voting or otherwise, with respect to one (1) or more of the following matters:

(A) The dissolution and winding up of the limited partnership or an election to continue the limited partnership or an election to continue the business of the limited partnership;

(B) The sale, exchange, lease, mortgage, assignment, pledge or other transfer of, or granting of a security interest in, any asset or assets of the limited partnership;

(C) The incurrence, renewal, refinancing or payment or other discharge of indebtedness by the limited partnership;

(D) A change in the nature of the business;

(E) The admission, removal or retention of a general partner;

(F) The admission, removal or retention of a limited partner;

(G) A transaction or other matter involving an actual or potential conflict of interest;

(H) An amendment to the partnership agreement or certificate of limited partnership;

(I) The merger of a limited partnership;

(J) In respect of a limited partnership which is registered as an investment company under the Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.), as amended, any matter required by the Investment Company Act of 1940, or the rules and regulations of the securities and exchange commission thereunder, to be approved by the holders of beneficial interests in an investment company, including the electing of directors or trustees of the investment company, the approving or terminating of investment advisory or underwriting contracts, and the approving of auditors;

(K) The indemnification of any partner or other person; or

(L) Such other matters as are stated in the partnership agreement or in any other agreement or in writing; or

(9) Any right or power granted or permitted to limited partners under this chapter and not specifically enumerated in this subsection (b).

(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers or having or acting in other capacities by a limited partner constitutes participation by him in the control of the business of the limited partnership.

(d) A limited partner does not participate in the control of the business within the meaning of subsection (a) by virtue of the fact that all or any part

of the name of such limited partner is included in the name of the limited partnership.

(e) This section does not create rights or powers of limited partners. Such rights and powers may be created only by a certificate of limited partnership, a partnership agreement or any other agreement, or other sections of this chapter.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 27-37.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

NOTES TO DECISIONS

1. Liability.
Limited partners are not liable for the acts or obligations of their limited partnership where they have not participated in the control of the partnership's business; conversely, a general partner of a limited partnership is jointly and severally liable for everything chargeable to the limited partnership. Pioneer Inv. Servs. Co. v. Cain Partnership, Ltd., 141 B.R. 635, 1992 Bankr. LEXIS 903 (Bankr. E.D. Tenn. 1992).

61-2-303. Person believed to be limited partner.

(a) Except as provided in subsection (b), a person who makes a contribution to a partnership and erroneously but in good faith believes that he has become a limited partner in the partnership is not a general partner in the partnership and is not bound by its obligations by reason of making the contribution, receiving distributions from the partnership or exercising any rights of a limited partner, if, within a reasonable time after ascertaining the mistake:

(1) In the case of a person who wishes to be a limited partner, he causes, if applicable, a certificate of amendment withdrawing him as a general partner to be executed and filed with the office of the secretary of state and has his interest as a limited partner properly recorded, in the limited partnership's records as required by law and the partnership agreement;

(2) In the case of a person who wishes to withdraw from the partnership, he takes such action as may be necessary to withdraw.

(b) A person who makes a contribution under the circumstances described in subsection (a) is liable as a general partner to any third party who transacts business with the partnership prior to the occurrence of either of the events referred to in subsection (a):

(1) If such person knew or should have known either that no certificate has been filed or that the certificate inaccurately refers to him as a general partner; and

(2) If the third party actually believed in good faith that such person was a general partner at the time of the transaction, acted in reasonable reliance on such belief and extended credit to the partnership in reasonable reliance on the credit of such person.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 38.

Law Reviews.
The Tennessee Revised Uniform Limited

Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

61-2-304. Right to information.

(a) Any person shall have the right to examine the current list of the names and addresses of all general and limited partners of any partnership formed under this chapter at the registered office of the partnership during reasonable business hours, and, upon payment of reasonable costs of duplication, to make a copy thereof.

(b) Each limited partner has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished, at what time and location and at whose expense) as may be set forth in the partnership agreement or otherwise established by the general partners, to obtain from the general partners, from time to time, upon reasonable demand for any purpose reasonably related to the limited partner's interest as a limited partner:

(1) True and full information regarding the status of the business and financial condition of the limited partnership;

(2) Promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year;

(3) A current list of the name and last known business, residence or mailing address of each partner;

(4) A copy of any written partnership agreement and certificate of limited partnership and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the partnership agreement and any certificate and all amendments thereto have been executed;

(5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each partner and which each partner has agreed to contribute in the future, and the date on which each became a partner; and

(6) Other information regarding the affairs of the limited partnership as is just and reasonable.

(c) A general partner shall have the right to keep confidential from limited partners for such period of time as the general partner deems reasonable, any information which the general partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the general partner in good faith believes is not in the best interest of the limited partnership or could damage the limited partnership or its business or which the limited partnership is required by law or by agreement with a third party to keep confidential.

(d) A limited partnership may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(e) Any demand under this section shall be in writing and shall state the purpose of such demand.

(f) Any action to enforce any right arising under this section shall be brought in a court of record.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 39.

Cross-References.
Confidentiality of public records, § 10-7-504.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

PART 4

GENERAL PARTNERS

61-2-401. Additional partners.

After the filing of a limited partnership's initial certificate of limited partnership, unless otherwise provided in the partnership agreement, additional general partners may be admitted only with the approval of all partners.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 41.

61-2-402. When person ceases to be partner.

(a) A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) The general partner withdraws from the limited partnership as provided in § 61-2-602;

(2) The general partner ceases to be a general partner of the limited partnership as provided in § 61-2-702;

(3) The general partner is removed as a general partner in accordance with the partnership agreement;

(4) Unless otherwise provided in the partnership agreement, or with the approval of all partners, the general partner:

(A) Makes an assignment for the benefit of creditors;

(B) Files a voluntary petition in bankruptcy;

(C) Is adjudged bankrupt or insolvent, or has entered against him an order for relief in any bankruptcy or insolvency proceeding;

(D) Files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(E) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(F) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties;

(5) Unless otherwise provided in the partnership agreement, or with the approval of all partners, one hundred twenty (120) days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the general

partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated;

(6) In the case of a general partner who is a natural person:

(A) His death; or

(B) The entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his property;

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter and the expiration of ninety (90) days after the date of notice to the corporation of administrative dissolution or revocation without a reinstatement of its charter; or

(10) Unless otherwise provided in the partnership agreement, or with the written consent of all partners in the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited partnership.

(b) A general partner who suffers an event that with the passage of the specified period becomes an event of withdrawal under subdivisions (a)(4), (5) or (9) shall notify each other general partner, or in the event that there is no other general partner, each limited partner, of the occurrence of the event within thirty (30) days after the date of its occurrence.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 42-47.

61-2-403. Rights and powers — Liabilities.

(a) Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

History.
Acts 1988, ch. 922, § 1.

NOTES TO DECISIONS

1. Liability.
Limited partners are not liable for the acts or obligations of their limited partnership where they have not participated in the control of the

partnership's business; conversely, a general partner of a limited partnership is jointly and severally liable for everything chargeable to the limited partnership. Pioneer Inv. Servs. Co. v. Cain Partnership, Ltd., 141 B.R. 635, 1992 Bankr. LEXIS 903 (Bankr. E.D. Tenn. 1992).

In an action for breach of contract by the agent of a limited partnership against the limited partnership, general partner and the limited partners, the general partner could be held liable in the same manner as the general partner in a general partnership. Life Care Ctrs. of Am. v. Charles Town Assocs. Ltd. Ptnr., 79 F.3d 496, 1996 FED App. 83P, 1996 U.S. App. LEXIS 4070 (6th Cir. Tenn. 1996).

61-2-404. Contributions — Share of profits, etc.

A general partner of a limited partnership may make contributions to the limited partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner, and, except as provided in the partnership agreement, also has the rights and powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner.

History.
Acts 1988, ch. 922, § 1.

61-2-405. Discharge of duties — Liability.

(a) A general partner shall discharge his duties as a partner, including his duties as a member of a committee:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner he reasonably believes to be in the best interest of the partnership.

(b) In discharging his duties, a general partner is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(1) One (1) or more officers or employees of the partnership whom the general partner reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants or other persons as to matters the general partner reasonably believes are within the person's professional or expert competence; or

(3) A committee of the partners of which he is not a member, if the general partner reasonably believes the committee merits confidence.

(c) The general partner is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A general partner is not liable for any action taken as a partner, or any failure to take any action, if he performed the duties of his office in compliance with this section.

History.
Acts 1988, ch. 922, § 1.

NOTES TO DECISIONS

1. Applicability.
This section does not govern a general partner's liability to third parties, but merely provides the operative rule for a general partner's liability to the partnership and the other partners. Life Care Ctrs. of Am. v. Charles Town Assocs. Ltd. Ptnr., 79 F.3d 496, 1996 FED App. 83P, 1996 U.S. App. LEXIS 4070 (6th Cir. Tenn. 1996).

61-2-406. Conflict of interest.

(a) A conflict of interest transaction is a transaction with the partnership in which a general partner of the partnership has a direct or indirect interest. A conflict of interest transaction is not voidable by the partnership solely because of the general partner's interest in the transaction if any one (1) of the following is true:

(1) The material facts of the transaction and the general partner's interest were disclosed or known to all the general partners and the transaction is authorized, approved or ratified by the affirmative vote of a majority of the general partners who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved or ratified under this section by a single general partner;

(2) The material facts of the transaction and the general partner's interest were disclosed or known to a committee of not less than three (3) partners, none of whom have a direct or indirect interest in the transaction, and such committee authorized, approved or ratified the transaction;

(3) The material facts of the transaction and the general partner's interest were disclosed or known to all disinterested partners and a majority of such disinterested partners authorized, approved or ratified the transaction; or

(4) The transaction was fair to the partnership.

(b) For purposes of this section, a general partner of the partnership has an indirect interest in a transaction if, but not only if, another entity in which he has a material financial interest or of which he is a director, officer, trustee or partner is a party to the transaction.

(c) For purposes of subdivision (a)(3), votes of partners who have a direct or indirect interest in a transaction or votes of those under the control of an entity described in subsection (b), may not be counted in a vote of partners to determine whether to authorize, approve or ratify a conflict of interest transaction under subdivision (a)(3). The votes of those partners, however, shall be counted in determining whether the transaction is approved under other sections of this title. A majority of the partners, whether or not present, that are entitled to vote on the transaction under this subsection (c) constitutes a quorum for the purpose of taking action under this section.

History.
Acts 1988, ch. 922, § 1.

PART 5
CONTRIBUTION

61-2-501. Form.

The contribution of a partner may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

History.
Acts 1988, ch. 922, § 1.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

61-2-502. Obligation of partner — Failure to contribute.

(a) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value (as stated in the records of the limited partnership) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited partnership may have against such partner under the partnership agreement or applicable law.

(b) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit after the entering into of a partnership agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a partner to make a contribution or return. A conditional obligation of a partner to make a contribution or return money or other property to a limited partnership may not be enforced unless the conditions to the obligation have been satisfied or waived as to or by such partner. Conditional obligations include contributions payable upon a discretionary call of a limited partnership or a general partner prior to the time the call occurs.

(c) A partnership agreement may provide that the interest of any partner who fails to make any contribution that he is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of:

(1) Reducing or eliminating the defaulting partner's proportionate interest in the limited partnership;

(2) Subordinating his partnership interest to that of nondefaulting

partners;

(3) A forced sale of his partnership interest;

(4) Forfeiture of his partnership interest;

(5) The lending by other partners of the amount necessary to meet his commitment;

(6) A fixing of the value of his partnership interest by appraisal or by formula and redemption or sale of his partnership interest at such value; or

(7) Other penalty or consequence.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 48-51.

61-2-503. Allocation of profits and losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited partnership) of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned.

History.
Acts 1988, ch. 922, § 1.

61-2-504. Allocation of distributions.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distribution shall be made on the basis of the agreed value (as stated in the records of the limited partnership) of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned.

History.
Acts 1988, ch. 922, § 1.

PART 6

DISTRIBUTIONS AND WITHDRAWAL

61-2-601. Interim distributions.

Except as provided in this part, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

History.
Acts 1988, ch. 922, § 1.

61-2-602. Withdrawal of general partner.

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him, in addition to any remedies otherwise available under applicable law.

History.
Acts 1988, ch. 922, § 1.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

61-2-603. Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in the partnership agreement and in accordance with the partnership agreement.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 52; 1997, ch. 199, § 1.

61-2-604. Distribution upon withdrawal.

Except as provided in this part, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the partnership agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

History.
Acts 1988, ch. 922, § 1.

61-2-605. Distribution in kind.

Except as provided in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset, which is equal to the percentage in which he shares in distributions from the limited partnership.

History.
Acts 1988, ch. 922, § 1.

61-2-606. Right to distribution.

Subject to §§ 61-2-607 and 61-2-804, and unless otherwise provided in the partnership agreement, at the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. A partnership agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited partnership.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 53, 54.

61-2-607. Limitations on distribution.

(a) A limited partnership shall not make a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the assets of the limited partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability.

(b) A limited partner who receives a distribution in violation of subsection (a), and who knew at the time of the distribution that the distribution violated subsection (a), shall be liable to the limited partnership for the amount of the distribution. A limited partner who receives a distribution in violation of subsection (a), and who did not know at the time of the distribution that the distribution violated subsection (a), shall not be liable for the amount of the distribution. Subject to subsection (c), this subsection (b) shall not affect any obligation or liability of a limited partner under a partnership agreement or other applicable law for the amount of a distribution.

(c) Unless otherwise agreed, a limited partner who receives a distribution from a limited partnership shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of three (3) years from the date of the distribution.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 55.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

NOTES TO DECISIONS

1. Legislative Intent.
The legislature did not intend for the rights of a limited partnership's creditors to be subordinate to the right of a limited partner to be repaid his contribution. Kesterson Foods v. Scott, 932 S.W.2d 935, 1996 Tenn. App. LEXIS 258 (Tenn. Ct. App. 1996).

61-2-608. Priority between limited partners.

Where there are several limited partners, the members may agree that one (1) or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made, it shall be stated in the partnership agreement, and in the absence of such a statement, all the limited partners shall stand upon equal footing.

History.
Acts 1988, ch. 922, § 1; T.C.A., § 61-2-609; Acts 1989, ch. 270, § 56.

Compiler's Notes.
Former § 61-2-608 (Acts 1988, ch. 922, § 1), concerning liability upon return of contribution, was repealed by Acts 1989, ch. 270, § 56.

61-2-609. Classes and voting.

(a) A partnership agreement may provide for classes or groups of partners, both general and limited, having such relative rights, powers and duties as the partnership agreement may provide, and may make provisions for the future creation in the manner provided in the partnership agreement of additional classes or groups of partners having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of partners.

(b) Subject to § 61-2-302, the partnership agreement may grant to all or certain identified partners, both general and limited, or a specified class or group of the partners the right to vote separately or with all or any class or group of the partners, on any matter. Voting by limited partners may be on a per capita, number, financial interest, class, group or any other basis.

(c) A partnership agreement which grants a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any partner, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote. If provided in the partnership agreement, the general partners may make a recommendation on any proper proposal and require response within a specified time, but not less than thirty (30) days, and provide that failure to respond within the specified time shall constitute a vote which is consistent with the general partners' recommendation with respect to the proposal. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any particular general or limited partner or class or group of general or limited partners, including the creation under the provisions of the partnership agreement of a class or group of partnership interests that was not previously outstanding.

(d) Any right or power, including voting rights, granted to limited partners as permitted under § 61-2-302 shall be deemed to be permitted by this section.

History.
Acts 1988, ch. 922, § 1; T.C.A., § 61-2-610; Acts 1989, ch. 270, §§ 57-59.

Compiler's Notes.
Former § 61-2-609 was transferred to § 61-2-608 in 1989.

PART 7

PARTNERSHIP INTERESTS

61-2-701. Nature.

A partnership interest is personal property. A partner has no interest in specific limited partnership property.

History.
Acts 1988, ch. 922, § 1.

Textbooks.
Tennessee Jurisprudence, 20 Tenn. Juris., Partnership, §§ 2, 3.

61-2-702. Assignment.

(a) Unless otherwise provided in the partnership agreement:

(1) A partnership interest is assignable in whole or in part;

(2) An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights or powers of a partner;

(3) An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled; and

(4) A partner ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all of his partnership interest.

(b) The partnership agreement may provide that a partner's interest in a limited partnership may be evidenced by a certificate of partnership interest issued by the limited partnership and may also provide for the assignment or transfer of any partnership interest represented by such a certificate and make other provisions with respect to such certificates.

(c) Unless otherwise provided in a partnership agreement and except to the extent assumed by agreement, until an assignee of a partnership interest becomes a partner, the assignee shall have no liability as a partner solely as a result of the assignment.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 60.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

Attorney General Opinions.
Taxation of interest in limited partnership, OAG 89-75, 1989 Tenn. AG LEXIS 57 (5/4/89).

61-2-703. Rights of judgment creditor.

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

History.
Acts 1988, ch. 922, § 1.

61-2-704. Rights of assignee — Liabilities.

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

(1) The partnership agreement so provides; or

(2) All partners consent.

(b) An assignee who has become a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of his assignor under the partnership agreement and this chapter. Notwithstanding the foregoing, unless otherwise provided in the partnership agreement, an assignee who becomes a limited partner is liable for the obligations of his assignor to make contributions as provided in § 61-2-502, but shall not be liable for the obligations of his assignor under part 6 of this chapter. However, the assignee is not obligated for liabilities, including the obligations of his assignor to make contributions as provided in § 61-2-502, unknown to the assignee at the time he became a limited partner and the possibility of which could not be ascertained from the partnership agreement.

(c) Whether or not an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under parts 5 and 6 of this chapter.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 61, 62.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

61-2-705. Deceased or incompetent partners.

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator or other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any power under the partnership agreement of an assignee to become a limited partner. The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner. If a partner is a corporation, trust or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

History.
Acts 1988, ch. 922, § 1.

PART 8

DISSOLUTION

61-2-801. When required — Exception.

(a) A limited partnership is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) At the time or upon the happening of events specified in the partnership agreement;

(2) Written consent of all partners;

(3) In the event of withdrawal of a general partner, unless at the time there is at least one (1) other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within ninety (90) days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment, effective as of the date of withdrawal, of one (1) or more additional general partners if necessary or desired; or

(4) Entry of a decree of judicial dissolution under § 61-2-802.

(b) Upon dissolution of the limited partnership, a certificate of cancellation must be filed pursuant to § 61-2-203.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 63, 64.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

61-2-802. Judicial dissolution.

On application by or for a partner, the court of record may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

History.
Acts 1988, ch. 922, § 1.

61-2-803. Winding up.

(a) Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners or a person approved by the limited partners or, if there is more than one (1) class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate, may wind up the limited partnership's affairs, but the court of record, upon cause shown, may wind up the limited partnership's affairs upon application of any partner, his

legal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

(b) Upon dissolution of a limited partnership and until the filing of a certificate of cancellation as provided in § 61-2-203, the persons winding up the limited partnership's affairs may, in the name of and for and on behalf of the limited partnership, prosecute and defend suits, whether civil, criminal or administrative, settle in a reasonable manner and close the limited partnership's business, dispose of and convey the limited partnership's property, discharge or make reasonable provision for the limited partnership's liabilities, and distribute to the partners any remaining assets of the limited partnership, all without affecting the liability of limited partners and without imposing the liability of a general partner or a liquidating trustee.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 65, 66.

61-2-804. Distribution of assets.

(a) Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) To creditors, including partners who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited partnership (whether by payment or the making of reasonable provisions for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to partners under § 61-2-601 or § 61-2-604;

(2) Unless otherwise provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under § 61-2-601 or § 61-2-604; and

(3) Unless otherwise provided in the partnership agreement, to partners first for the return of their contributions, and second respecting their partnership interests, in the proportions in which the partners share in distributions.

(b) A limited partnership which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the limited partnership and all claims and obligations which are known to the limited partnership but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in a partnership agreement, any remaining assets shall be distributed as provided in this chapter. Any liquidating trustee winding up a limited partnership's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited partnership by reason of such person's actions in winding up the limited partnership.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 67-69.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

NOTES TO DECISIONS

1. Legislative Intent.
The legislature did not intend for the rights of a limited partnership's creditors to be subordinate to the right of a limited partner to be repaid that partner's own contribution. Kesterson Foods v. Scott, 932 S.W.2d 935, 1996 Tenn. App. LEXIS 258 (Tenn. Ct. App. 1996).

61-2-805. Known claims against dissolved limited partnership — Notice of dissolution.

(a) A dissolved limited partnership may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved limited partnership shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) Describe information that must be included in a claim;

(2) State whether the claim is admitted, or not admitted, and if admitted:

(A) The amount that is admitted, which may be as of a given date; and

(B) Any interest obligation if fixed by an instrument of indebtedness;

(3) Provide a mailing address where a claim may be sent;

(4) State the deadline, which may not be fewer than four (4) months from the effective date of the written notice, by which the dissolved limited partnership must receive the claim; and

(5) State that, except to the extent that any claim is admitted, the claim will be barred if written notice of the claim is not received by the deadline.

(c) A claim against the dissolved limited partnership is barred to the extent that it is not admitted:

(1) If the dissolved limited partnership delivered written notice to the claimant in accordance with subsection (b) and the claimant does not deliver a written notice of the claim to the dissolved limited partnership by the deadline; or

(2) If the dissolved limited partnership delivered written notice to the claimant that his claim is rejected, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within three (3) months from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

(e) For purposes of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five (5) days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed thereon;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on

behalf of the addressee; or

(4) Twenty (20) days after its deposit in the United States mail, as evidenced by the postmark if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

History.
Acts 1989, ch. 270, § 70.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), Nos. 6-901 — 6-903.

61-2-806. Unknown claims against dissolved limited partnership — Notice — Limitations.

(a) A dissolved limited partnership may also publish notice of its dissolution and request that persons with claims against the limited partnership present them in accordance with the notice.

(b) The notice must:

(1) Be published one (1) time in a newspaper of general circulation in the county where the dissolved limited partnership's principal office (or, if none in this state, its registered office) is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the limited partnership will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.

(c) If the dissolved limited partnership publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited partnership within two (2) years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under § 61-2-805;

(2) A claimant whose claim was timely sent to the dissolved limited partnership but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) Against the dissolved limited partnership, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a limited partner of the dissolved limited partnership to the extent of his pro rata share of the claim or the limited partnership assets distributed to him in liquidation, whichever is less, but a limited partner's total liability for all claims under this section may not exceed the total amount of assets distributed to him.

History.
Acts 1989, ch. 270, § 71.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), No. 6-904.

PART 9

FOREIGN LIMITED PARTNERSHIPS

61-2-901. Law governing.

(a) Subject to the Constitution of Tennessee:

(1) The laws of the jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and

(2) A foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

(b) A foreign limited partnership shall be subject to § 61-2-106.

History.
Acts 1988, ch. 922, § 1.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

61-2-902. Registration required — Application.

(a) Before doing business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state:

(1) An original copy executed by a general partner of an application for registration as a foreign limited partnership, setting forth:

(A) The name of the foreign limited partnership and, if different, the name under which it proposes to register and do business in this state;

(B) The jurisdiction where organized, the date of its organization and a statement from a general partner that, as of the date of filing, the foreign limited partnership validly exists as a limited partnership under the laws of the jurisdiction of its organization;

(C) The nature of the business or purposes to be conducted or promoted in this state;

(D) The street address and zip code of its registered office in this state, the county in which that office is located, and the name of its registered agent at that office;

(E) The street address, including the zip code, of its principal office (and a mailing address such as a post office box if the United States postal service does not deliver to the principal office);

(F) The name and business, residence or mailing address and zip code of each of the general partners; and

(G) The date on which the foreign limited partnership first did, or intends to do, business in this state;

(2) The foreign limited partnership shall deliver with the completed

application a certificate of existence (or a document of similar import) duly authenticated by the secretary of state or other official having custody of limited partnership records in the jurisdiction under whose law it is formed. The certificate shall not bear a date of more than two (2) months prior to the date the application is filed in this state; and

(3) A fee as set forth in § 61-2-1207(a)(5).

(b) A partnership (general or limited) or corporation formed or organized under the laws of any foreign jurisdiction or the laws of any state other than this state shall not be deemed to be doing business in Tennessee solely by reason of its being a partner in a domestic or registered foreign limited partnership.

(c) If the secretary of state determines upon registration that a foreign limited partnership has been doing business in this state for a period of one (1) year or more prior to applying for registration, then the secretary of state shall require the foreign limited partnership to submit a confirmation of good standing relative to such foreign limited partnership.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 72, 73; 1991, ch. 189, § 1; 2010, ch. 741, § 54; 2014, ch. 783, § 23.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), No. 6-801.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

61-2-903. Filing of application.

If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall file the application in accordance with part 11 of this chapter.

History.
Acts 1988, ch. 922, § 1.

61-2-904. Name — Registered office and agent.

(a) A foreign limited partnership may register with the secretary of state under any name (whether or not it is the name under which it is registered in the jurisdiction of its organization) that includes the words "Limited Partnership" or the abbreviation "L.P." and that could be registered by a domestic limited partnership.

(b) Except as authorized by subsection (c), the name of a foreign limited partnership that registers to do business in this state, shall be distinguishable upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

(c) A foreign limited partnership may apply to the secretary of state for authorization to use a name that is not distinguishable upon his records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the name applied for if:

(1) The person holding the right to use the previously filed name described in subsection (b) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The person holding the right to use the previously filed name described in subsection (b) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

(d) Each foreign limited partnership shall continuously maintain in this state:

(1) A registered office which may but need not be a place of its business in this state; and

(2) A registered agent, which agent may be either an individual resident of this state whose business office is identical with the limited partnership's registered office, or a domestic corporation or a foreign corporation authorized to transact business in this state having a business office identical with such registered office.

(e) A foreign limited partnership authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(1) Its name;

(2) The street address, including the zip code, of its current registered office;

(3) If the current registered office is to be changed, the street address, including the zip code, of its new registered office and the county in which the office is located;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of its new registered agent; and

(6) That after the change or changes are made, the street addresses, including zip codes, of its registered office and the business office of its registered agent will be identical.

(f) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any foreign limited partnership for which he is a registered agent by notifying the limited partnership in writing of the change and signing (either manually or in facsimile) and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (e) and recites that the limited partnership has been notified of the change.

(g) Each foreign limited partnership authorized to transact business in this state shall comply with § 61-2-104(e).

(h) The registered agent of a foreign limited partnership may resign his agency appointment by signing and filing with the secretary of state an

original statement of resignation accompanied by his certification that he has mailed a copy thereof to the principal office of the limited partnership by certified mail. The statement or resignation may include a statement that the registered office is also discontinued. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary of state.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 74; 2010, ch. 743, §§ 13, 14.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), Nos. 6-601 — 6-604.

61-2-905. Amended registration.

(a) If any statement required by § 61-2-902 in the application for registration of a foreign limited partnership was false when made or any matter described in the application for registration has changed, making the application false, the foreign limited partnership shall promptly file with the secretary of state an application for an amended registration of a foreign limited partnership. Notwithstanding the preceding sentence, a change in the foreign limited partnership's registered agent or registered office can be made by filing a statement of change as provided in § 61-2-904(e). An application for an amended registration need not also be filed. Nothing in this chapter shall be construed as requiring an amended registration if the only change in the certificate of foreign limited partnership is related to the admission or substitution of limited partners.

(b) The requirements of § 61-2-902 for obtaining an original registration of a foreign limited partnership apply to obtaining an amended registration under this section.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 75.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), No. 6-802.

61-2-906. Cancellation of registration.

(a) A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation of registration executed by a general partner, which shall set forth:

(1) The name of the foreign limited partnership, and, if different, the name under which it is registered to do business in Tennessee;

(2) The name of the state or country under whose law it was organized;

(3) That it is not transacting business in this state and that it surrenders its registration to transact business in this state;

(4) That it either continues its registered agent in this state or revokes the authority of the registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(5) A mailing address to which the secretary of state may mail a copy of

any process served on him under subdivision (a)(4); and

(6) A commitment to notify the secretary of state in the future of any change in mailing address.

(b) The secretary of state shall file the certificate of cancellation of registration if the secretary of state finds that the certificate of cancellation of registration:

(1) Complies with subsection (a); and

(2) Is accompanied by a tax clearance for termination or withdrawal relative to such foreign limited partnership.

(c) When the certificate of cancellation of registration has been filed in accordance with subsection (b), the cancellation of the certificate of registration of the foreign limited partnership is effective. After cancellation of the registration of the foreign limited partnership is effective, service of process on the secretary of state or the continued registered agent under this section is service on the foreign limited partnership. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited partnership at the mailing address set forth under subdivision (a)(5).

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 76; 2009, ch. 354, §§ 3, 4; 2010, ch. 741, § 55.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), No. 6-1002.

61-2-907. Doing business without registration — Penalty.

(a) A foreign limited partnership doing business in this state may not maintain any action, suit or proceeding in this state until it has registered in this state and has paid to this state all fees for the years or parts thereof during which it did business in this state without having registered.

(b) The failure of a foreign limited partnership to register in this state does not impair:

(1) The validity of any contract or act of the foreign limited partnership;

(2) The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(3) The foreign limited partnership from defending any action, suit or proceeding in any court of this state.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the limited partnership having done business in this state without registration.

(d) Any foreign limited partnership doing business in this state without first having registered shall be fined and shall pay to the secretary of state two hundred dollars ($200) for each year or part thereof during which the foreign limited partnership failed to register in this state.

History.
Acts 1988, ch. 922, § 1.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

61-2-908. Enjoined from doing business.

The court of record shall have jurisdiction to enjoin any foreign limited

partnership, or any agent thereof, from doing any business in this state if such foreign limited partnership has failed to register under this part or if such foreign limited partnership has secured a certificate from the secretary of state under § 61-2-903 on the basis of false or misleading representations. The attorney general shall, upon his own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign limited partnership is doing or has done business.

History.
Acts 1988, ch. 922, § 1.

61-2-909. Other provisions applicable.

Sections 61-2-204(c) and 61-2-207 shall be applicable to foreign limited partnerships as if they were domestic limited partnerships.

History.
Acts 1988, ch. 922, § 1.

61-2-910. Service of process.

(a) The registered agent of a foreign limited partnership authorized to transact business in this state is the limited partnership's agent for service of process, notice or demand required or permitted by law to be served on the foreign limited partnership.

(b) Service on a limited partnership when the secretary of state is its agent for service of process may be obtained pursuant to § 61-2-106.

(c) This section does not prescribe the only means, or necessarily the required means, for serving a foreign limited partnership.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 77.

PART 10

DERIVATIVE ACTIONS

61-2-1001. Right to bring action.

A limited partner may bring an action in the court of record in the right of a limited partnership to recover judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

History.
Acts 1988, ch. 922, § 1.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

61-2-1002. Proper plaintiff.

In a derivative action the plaintiff must be a partner at the time of bringing the action and:

(1) At the time of the transaction of which he complains; or

(2) His status as a partner had devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

History.
Acts 1988, ch. 922, § 1.

61-2-1003. Complaint.

In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

History.
Acts 1988, ch. 922, § 1.

61-2-1004. Award of expenses.

If a derivative action is successful in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees. If anything is so received by the plaintiff, the court shall make such award of plaintiff's expenses payable out of those proceeds and direct plaintiff to remit to the limited partnership the remainder thereof, and if those proceeds are insufficient to reimburse plaintiff's reasonable expenses, the court may direct that any such award of plaintiff's expenses or portion thereof be paid by the limited partnership.

History.
Acts 1988, ch. 922, § 1.

PART 11

FILING WITH SECRETARY OF STATE

61-2-1101. Requirements generally.

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

(b) Parts 1, 2 and 9 of this chapter must require or permit filing the documents with the secretary of state.

(c) The document must contain the information required by parts 1, 2 and 9 of this chapter. It may contain other information as well.

(d) The document must be typewritten or printed in ink in a clear and legible fashion on one (1) side of letter size paper.

(e) The document must be in the English language. A limited partnership name need not be in English if written in English letters or Arabic or Roman numerals.

(f) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs.

(g) The document must be delivered to the office of the secretary of state for filing and must be accompanied by the correct filing fee, and any corporate tax, license fee, interest or penalty required by part 12 of this chapter.

(h) The secretary of state has the power to promulgate appropriate rules and regulations establishing acceptable methods for execution of any document to be filed with the secretary of state.

(i) All documents submitted to the secretary of state for filing should contain a statement which makes it clear that they are being filed pursuant to the Tennessee Revised Uniform Limited Partnership Act.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 78; 2011, ch. 99, § 29.

61-2-1102. Forms.

The secretary of state may prescribe and shall furnish on request forms for all documents required or permitted to be filed by this chapter, but their use is not mandatory.

History.
Acts 1988, ch. 922, § 1.

61-2-1103. Filing, service, and copying fees.

(a) The secretary of state shall collect the fees set forth in § 61-2-1207(a) when the documents described in that section are delivered to the secretary of state for filing.

(b) The secretary of state shall collect a fee of ten dollars ($10.00), for each party at each address, each time process is served on the secretary of state under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The secretary of state shall collect a fee of ten dollars ($10.00) for copying all filed documents relating to a domestic or foreign limited partnership. All such copies will be certified or validated by the secretary of state.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 78, 79; 2011, ch. 99, § 22.

61-2-1104. Effective time and date — Delays — Registered agent and office.

(a) Except as provided in subsection (b) and § 61-2-1105, a document accepted for filing is effective:

(1) At the time of filing on the date it is filed by the secretary of state, as evidenced by the secretary of state's date and time endorsement on the original document; and

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed

effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed by the secretary of state. Notwithstanding the foregoing, an application for a reserved name, a notice of transfer or cancellation of a reserved name and certificate of correction, may not specify a delayed effective date and time.

(c) The secretary of state shall not file any certificate of limited partnership or an application for registration, unless the document designates the registered agent and registered office of such domestic or foreign limited partnership in accordance with parts 1 and 9 of this chapter. The secretary of state shall not file any other document under parts 1, 2 and 9 of this chapter if, at the time of filing, the domestic or foreign limited partnership does not have a registered agent or registered office designated at such time, unless at the time such document is received for filing the secretary of state also receives for filing a statement designating such registered agent or registered office or both.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, § 80.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), No. 6-1102.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

61-2-1105. Corrections — When effective.

(a) A domestic or foreign limited partnership may correct a document filed by the secretary of state if the document:

(1) Contains an incorrect statement; or

(2) Was defectively executed, attested, sealed, verified or acknowledged.

(b) A document is corrected:

(1) By preparing a certificate of correction that:

(A) Describes the document (including its filing date) or attaches a copy of it to the certificate;

(B) Specifies the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(C) Corrects the incorrect statement or defective execution; and

(2) By delivering the certificate to the secretary of state for filing.

(c) Certificates of correction are effective on the effective time and date of the document they correct except as to persons relying on those uncorrected documents and adversely affected by the correction. As to those persons, certificates of correction are effective when filed.

History.
Acts 1988, ch. 922, § 1.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), No. 6-1101.

61-2-1106. Filing procedure — Refusal — Effect.

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of § 61-2-1101, the secretary of state shall file it.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with his name and official title and the date and time of receipt, on such document. After filing a document, the secretary of state shall deliver the document, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign limited partnership or its representative in due course. A domestic or foreign limited partnership or its representative may present to the secretary of state an exact or conformed copy of the document presented for filing, together with such document, and, in that event, the secretary of state shall stamp or otherwise endorse the exact or conformed copy filed, together with his name and official title and the date and time of receipt, and immediately return the exact or conformed copy to the party filing the original of such document.

(c) If the secretary of state refuses to file a document, he shall return it to the domestic or foreign limited partnership or its representative within a reasonable time after the document was received for filing, together with a brief, written explanation of the reason for his refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document;

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect; or

(4) Establish that a document purporting to be an exact or conformed copy pursuant to subsection (b) is an exact or conformed copy.

(e) Any limited partnership document which meets the requirements of parts 1, 2 and 9 of this chapter for filing and recording shall be received, filed and recorded by the appropriate office, notwithstanding any contrary requirements found in any other laws of this state.

History.
Acts 1988, ch. 922, § 1.

61-2-1107. Appeal of refusal to file document.

(a) If the secretary of state refuses to file a document delivered to his office for filing, the domestic or foreign limited partnership may appeal the refusal to the chancery court of Davidson County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

(b) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

(d) Any judicial review of the secretary of state's refusal to file a document shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History.
Acts 1988, ch. 922, § 1.

61-2-1108. Copy as evidence.

A certificate attached or certification affixed to a copy of a document filed by the secretary of state, bearing his signature (which may be in facsimile) and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

History.
Acts 1988, ch. 922, § 1.

PART 12
MISCELLANEOUS

61-2-1201. Construction.

(a) This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(b) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

History.
Acts 1988, ch. 922, § 1.

61-2-1202. Short title.

This chapter shall be known and may be cited as the "Tennessee Uniform Limited Partnership Act of 1988."

History.
Acts 1988, ch. 922, § 1; 2017, ch. 440, § 3.

61-2-1203. Severability.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History.
Acts 1988, ch. 922, § 1.

61-2-1204. Effective date and extended effective date.

(a) All limited partnerships formed on or after January 1, 1989, the "effective date" shall be governed by this chapter.

(b) Except as provided in subsections (e) and (f), all limited partnerships formed on or after January 1, 1988, and prior to January 1, 1989, under chapter 2 of this title as hereby repealed, shall continue to be governed by that chapter until July 1, 1989, the "extended effective date," at which time such limited partnerships shall be governed by this chapter.

(c) Except as provided in subsection (e), a limited partnership formed prior

to January 1, 1988, shall continue to be governed by chapter 2 of this title in effect prior to the adoption of chapter 2 of this title as hereby repealed, except that such limited partnership shall not have its term extended except under this chapter.

(d) Except as provided in subsection (e), part 9 of this chapter, relative to foreign limited partnerships, is not effective until July 1, 1989.

(e) Any limited partnership formed prior to January 1, 1989 and any foreign limited partnership may elect to be governed by this chapter before July 1, 1989 by filing with the register of deeds prior to January 1, 1989 and with the secretary of state on and after January 1, 1989 a certificate of limited partnership, or an application for registration as a foreign limited partnership which complies with this chapter or a certificate of amendment which would cause its certificate of limited partnership to comply with this chapter and which specifically states that it is electing to be so bound and by paying the fee for a certificate of limited partnership specified in § 61-2-1207(a)(8). Such certificate may be filed by any general partner without the necessity of obtaining the approval of any limited partner.

(f) With respect to a limited partnership formed on or after January 1, 1988 and prior to January 1, 1989:

(1) On and after July 1, 1989, such limited partnership need not file with the secretary of state a certificate of amendment which would cause its certificate of limited partnership to comply with this chapter until the occurrence of an event which, under this chapter, requires the filing of a certificate of amendment;

(2) Sections 61-2-501 and 61-2-502, and 61-2-607(b) shall apply only to contributions and distributions made after January 1, 1989; and

(3) Section 61-2-704 shall apply only to assignments made after January 1, 1989.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 81-83, 86.

Law Reviews.
The Tennessee Revised Uniform Limited Partnership Act (Glenn Stophel and James C. Heartfield), 26 No. 5 Tenn. B.J. 22 (1990).

61-2-1205. Rules of law and equity.

In any case not provided for in this chapter, the Tennessee Uniform Partnership Law, compiled in chapter 1 of this title, and the rules of law and equity shall govern.

History.
Acts 1988, ch. 922, § 1.

61-2-1206. Prior law.

Except as set forth in § 61-2-1204, former chapter 2 of this title is hereby repealed.

History.
Acts 1988, ch. 922, § 1.

61-2-1207. Fees.

(a) The secretary of state shall collect the following fees when the documents described in this subsection (a) are delivered to the secretary of state for filing:

Document	Fee
(1) Application for use of indistinguishable name	$20.00
(2) Application for reservation of limited partnership name	20.00
(3) Notice of transfer of reserved name	20.00
(4) Notice of cancellation of reserved name	20.00
(5) Statement of change of registered agent/office (by domestic/foreign limited partnership)	20.00
(6) Statement of change of registered office of limited partnership (by agent)	5.00 per limited partnership, but not less than 20.00
(7) Statement of resignation of registered agent for limited partnership	20.00
(8) Certificate of limited partnership (including designation of initial registered office and agent)	100.00
(9) Amendment to the certificate of limited partnership	20.00
(10) Certificate of cancellation of limited partnership	20.00
(11) Certificate of cancellation of limited partnership	20.00
(12) Amended and restated certificate of limited partnership	20.00
(13) Certificate of merger of limited partnership	100.00
(14) Application for registration of foreign limited partnership (including designation of initial registered office and agent)	600.00
(15) Application for amended registration of foreign limited partnership	20.00
(16) Certificate of cancellation of registration of foreign limited partnership	20.00
(17) Certificate of correction	20.00
(18) Execution, amendment or cancellation of limited partnership by judicial order	No Fee
(19) Application for certificate of existence or registration of limited partnership	20.00
(20) Any other document required or permitted to be filed by chapter 2 of this title	20.00

(b) The secretary of state shall collect a fee of twenty dollars ($20.00) each time process is served on the secretary of state under chapter 2 of this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.

(c) The secretary of state shall collect a fee of twenty dollars ($20.00) for copying all filed documents relating to a domestic or foreign limited partnership. All such copies will be certified or validated by the secretary of state.

History.
Acts 1988, ch. 922, § 1; 1989, ch. 270, §§ 84, 87; 1998, ch. 890, § 4; 2000, ch. 568, § 5; 2010, ch. 742, § 13.

Textbooks.
Tennessee Forms (Robinson, Ramsey and Harwell), No. 6-801.

61-2-1208. Reserved power of state of Tennessee to alter or repeal chapter.

All provisions of this chapter may be altered from time to time or repealed, and all rights of partners are subject to this reservation.

History.
Acts 1988, ch. 922, § 1.

61-2-1209. Certificate of existence.

(a) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic limited partnership or a certificate of registration for a foreign limited partnership registered to transact business in this state.

(b) A certificate of existence or registration sets forth:

(1) The domestic limited partnership's name or the foreign limited partnership's name used in this state;

(2) That:

(A) The domestic limited partnership is a limited partnership formed under the laws of this state, and the effective date of the filing of its initial certificate of limited partnership; or

(B) The foreign limited partnership is a limited partnership registered to transact business in this state;

(3) That all fees, taxes and penalties owed to this state have been paid, if:

(A) Payment is reflected in the records of the secretary of state or the department of revenue; and

(B) Nonpayment affects the existence or registration of the domestic or foreign limited partnership;

(4) That:

(A) Neither a certificate of cancellation nor a decree of judicial dissolution has been filed for a domestic limited partnership; or

(B) A certificate of cancellation has not been filed for a foreign limited partnership;

(5) That the certificate of existence or registration is effective as of the date of the issuance of the certificate; and

(6) Other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualifications stated in the certificate, a certificate of existence or registration issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign limited partnership has been formed or is registered to transact business in this state, that the domestic limited partnership's certificate of limited partnership has not been cancelled,

and that the domestic or foreign limited partnership is in good standing as far as the records of the secretary of state show.

History.
Acts 2010, ch. 742, § 12.

CHAPTER 3

TENNESSEE UNIFORM LIMITED PARTNERSHIP ACT OF 2017

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PART 1

GENERAL PROVISIONS

61-3-101. Definitions.

As used in this chapter:

(1) "Active and in good standing as reflected in the records of the secretary of state" means a corporation, limited liability company, or partnership that is in existence, registered or authorized to transact business in this state as reflected in the records of the secretary of state; and in the case of a corporation, limited liability company, limited liability partnership, or limited partnership, such entity is in good standing with the department of revenue;

(2) "Certificate of limited partnership":

(A) Means the certificate required by § 61-3-201; and

(B) Includes the certificate as amended or restated;

(3) "Contribution," except when used in the phrase "right of contribution",

means property or a benefit described in § 61-3-501 that is provided by a person to a limited partnership to become a partner or in the person's capacity as a partner;

(4) "Debtor in bankruptcy" means a person that is the subject of:

(A) An order for relief under 11 U.S.C. § 101 et seq. or a comparable order under a successor statute of general application; or

(B) A comparable order under federal, state, or foreign law governing insolvency;

(5) "Distribution":

(A) Means a direct or indirect transfer of money or other property by a limited partnership, except for the issuance of its own partnership interests, with or without consideration, or an incurrence or issuance of indebtedness, whether directly or indirectly, including through a guaranty to or for the benefit of any of its partners in respect of partnership interests;

(B) Includes interim distribution or a liquidation distribution; a purchase, redemption, or other acquisition of its partnership interests; of a distribution indebtedness, which includes the incurrence of indebtedness, whether directly or indirectly, including through a guaranty, for the benefit of the limited partnership's partners; or any other transaction;

(C) Does not mean amounts paid to or for the benefit of partners as compensation or benefits for services rendered by the partners in their capacities as partners, agents, or independent contractors;

(6) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the debts, obligations, or other liabilities of the foreign partnership under a provision similar to § 61-3-404(c);

(7) "Foreign limited partnership":

(A) Means an unincorporated entity formed under the laws of a jurisdiction other than this state that would be a limited partnership if formed under the laws of this state; and

(B) Includes a foreign limited liability limited partnership;

(8) "General partner" means a person that:

(A) Has become a general partner under § 61-3-401 or was a general partner in a partnership when the partnership became subject to this chapter; and

(B) Has not dissociated as a general partner under § 61-3-603;

(9) "Good standing with the department of revenue" means the secretary of state has received and verified through electronic confirmation or a certificate of tax clearance issued by the commissioner of revenue that a corporation, limited liability company, limited liability partnership, or limited partnership is current on all fees, taxes, and penalties to the satisfaction of the commissioner;

(10) "Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country;

(11) "Jurisdiction of formation" means the jurisdiction whose laws govern the internal affairs of an entity;

(12) "Letter of good standing from the department of revenue" means a letter issued by the department of revenue that a corporation, limited liability company, limited liability partnership, or limited partnership is current on all fees, taxes, and penalties to the satisfaction of the commissioner;

(13) "Limited liability limited partnership," except when used in the phrase "foreign limited liability limited partnership" and in part 11 of this chapter, means a limited partnership whose certificate of limited partnership states that the partnership is a limited liability limited partnership;

(14) "Limited partner" means a person that:

(A) Has become a limited partner under § 61-3-301 or was a limited partner in the partnership when the partnership became subject to this chapter; and

(B) Has not been dissociated under § 61-3-601;

(15) "Limited partnership", except in the phrase "foreign limited partnership" and in part 11 of this chapter:

(A) Means an entity formed under this chapter or which becomes subject to this chapter under part 11 of this chapter or § 61-3-1207; and

(B) Includes a limited liability limited partnership;

(16) "Partner" means a limited partner or general partner;

(17) "Partnership agreement":

(A) Means the agreement, whether or not referred to as a partnership agreement and whether oral, implied, in a record, or in any combination thereof, of all the partners of a limited partnership concerning the matters described in § 61-3-104(a); and

(B) Includes the agreement as amended or restated;

(18) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(19) "Principal office" means the principal executive office of a limited partnership or foreign limited partnership, whether or not the office is located in this state;

(20) "Property" means all property, whether real, personal, mixed, or tangible or intangible, or any right or interest in such property;

(21) "Record," when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(22) "Registered agent" means an agent of a limited partnership or foreign limited partnership who is authorized to receive service of any process or notice required or permitted by law to be served on the partnership;

(23) "Registered foreign limited partnership" means a foreign limited partnership that is registered to do business in this state pursuant to a statement of registration filed by the secretary of state;

(24) "Required information" means the information that a limited partnership is required to maintain under § 61-3-107;

(25) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process;

(26) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and

(27) "Transfer" includes:

(A) An assignment;

(B) A conveyance;

(C) A sale;

(D) A lease;

(E) An encumbrance, including a mortgage or security interest;

(F) A gift; and

(G) A transfer by operation of law.

History.

Acts 2017, ch. 440, § 1; 2018, ch. 575, § 1.

Amendments.

The 2018 amendment added the definitions of "active and in good standing as reflected in the records of the secretary of state", "good standing with the department of revenue", and "letter of good standing from the department of revenue".

Effective Dates.

Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-102. Knowledge — notice.

(a) A person knows a fact if the person:

(1) Has actual knowledge of it; or

(2) Is deemed to know it under law other than this chapter.

(b) A person has notice of a fact if the person:

(1) Has reason to know the fact from all the facts known to the person at the time in question; or

(2) Is deemed to have notice of the fact under subsection (c) or (d).

(c) A certificate of limited partnership filed with the secretary of state is notice that the partnership is a limited partnership and that the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsection (d), the certificate is not notice of any other fact not set out in this subsection (c).

(d) A person who is not a partner, is deemed to have notice of:

(1) A person's dissociation as a general partner the earlier of:

(A) Ninety (90) days after an amendment to the certificate of limited partnership stating that the other person has dissociated becomes effective; or

(B) Ninety (90) days after a statement of dissociation pertaining to the other person becomes effective;

(2) A limited partnership's:

(A) Dissolution ninety (90) days after an amendment to the certificate of limited partnership stating that the limited partnership is dissolved becomes effective; termination ninety (90) days after a statement of termination under § 61-3-802(b)(1)(B) becomes effective; and

(B) Participation in a merger, conversion, or domestication, ninety (90)

days after articles of merger, conversion, or domestication under part 11 of this chapter become effective.

(e) Subject to § 61-3-209(f), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(f) A general partner's knowledge or notice of a fact relating to the limited partnership is effective immediately as knowledge of or notice to the partnership, except in the case of a fraud on the partnership committed by or with the consent of the general partner. A limited partner's knowledge or notice of a fact relating to the partnership is not effective as knowledge of or notice to the partnership.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, § 2.

Amendments.
The 2018 amendment substituted "§ 61-3-802(b)(1)(B)" for "§ 61-3-802(b)(2)(F)" in (d)(2)(A).

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-103. Governing law.

The law of this state governs:

(1) The internal affairs of a limited partnership; and

(2) The liability of a partner as partner for a debt, obligation, or other liability of a limited partnership.

History.
Acts 2017, ch. 440, § 1.

61-3-104. Partnership agreement — Scope, function, and limitations.

(a) Except as otherwise provided in subsections (c) and (d), the partnership agreement governs:

(1) Relations among the partners as partners and between the partners and the limited partnership;

(2) The activities and affairs of the partnership and the conduct of those activities and affairs; and

(3) The means and conditions for amending the partnership agreement.

(b) To the extent the partnership agreement does not provide for a matter described in subsection (a), this chapter governs the matter.

(c) A partnership agreement shall not:

(1) Vary the law applicable under § 61-3-103;

(2) Vary a limited partnership's capacity under § 61-3-110 to sue and be sued in its own name;

(3) Vary § 61-3-204;

(4) Vary the right of a general partner under § 61-3-406(b)(2) to vote on or consent to an amendment to the certificate of limited partnership deleting a statement that the limited partnership is a limited liability limited partnership;

(5) Vary the notice requirements under § 61-3-102 or under this chapter in a manner that is manifestly unreasonable;

(6) Vary the requirements with respect to the limited partnership's name under § 61-3-112;

(7) Vary the requirement under § 61-3-119 regarding the Workers' Compensation Law, compiled in title 50, chapter 6;

(8) Eliminate or vary the restrictions on reimbursement and indemnification contained in § 61-3-408(a) and (b);

(9) Eliminate or vary the potential for personal liability of a general partner under § 61-3-404;

(10) Eliminate or vary this section;

(11) Eliminate or vary the limitations on distributions in § 61-3-504;

(12) Eliminate or vary the liability for unlawful distributions in § 61-3-505;

(13) Unreasonably restrict a right to information or access to records under § 61-3-304 or § 61-3-407;

(14) Eliminate or restrict the duty of loyalty under § 61-3-409(b)(1) or (b)(2), except to the extent provided by subsection (d);

(15) Unreasonably reduce the duty of care under § 61-3-409;

(16) Eliminate the obligation of good faith and fair dealing under § 61-3-305(a) and § 61-3-409(d), but the partnership agreement may determine standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(17) Vary the grounds for expulsion specified in § 61-3-603(5)(B);

(18) Vary the power of person to dissociate as a general partner under § 61-3-604(a), except to require that the notice under § 61-3-603(1) be in a record;

(19) Vary the causes of dissolution specified in § 61-3-801(a)(6);

(20) Vary the requirement to wind up the partnership's activities and affairs as specified in § 61-3-802(a), (b)(1)(B), and (d);

(21) Vary the provisions of § 61-3-905, but the partnership agreement may provide that the partnership shall not have a special litigation committee;

(22) Vary any requirements relating to documents required to be filed with the secretary of state or any register of deeds, or otherwise vary or restrict any other rights of the secretary of state or any register of deeds; and

(23) Except as provided in §§ 61-3-105 and 61-3-106(b), vary or restrict any rights of any person under this chapter, other than a partner.

(d) Without limiting other terms that may be included in a partnership agreement, the following applies:

(1) The partnership agreement may:

(A) Specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one (1) or more disinterested and independent persons after full disclosure of all material facts; and

(B) Alter the prohibition in § 61-3-504(a)(2) so that the prohibition requires only that the partnership's total assets not be less than the sum of its total liabilities; and

(2) If not manifestly unreasonable, the partnership agreement may:

(A) Alter or eliminate the aspects of the duty of loyalty stated in § 61-3-409(b)(1) or (b)(2);

(B) Identify specific types or categories of activities that do not violate the duty of loyalty;

(C) Alter the duty of care, but shall not authorize conduct involving bad faith, willful or intentional misconduct, or knowing violation of law; and

(D) Alter or eliminate any other fiduciary duty.

(e) The court shall decide as a matter of law whether a term of a partnership agreement is manifestly unreasonable under subdivision (c)(5), (c)(16), or (d)(2). The court:

(1) Shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and

(2) May invalidate the term only if, in light of the purposes, activities, and affairs of the limited partnership, it is readily apparent that:

(A) The objective of the term is unreasonable; or

(B) The term is an unreasonable means to achieve its objective.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, § 3.

Amendments.
The 2018 amendment substituted "§ 61-3-802(a), (b)(1)(B), and (d)" for "§ 61-3-802(a), (b)(1), and (d)" in (c)(20).

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-105. Partnership agreement — Effect on limited partnership and person becoming partner — Preformation agreement.

(a) A limited partnership is bound by and may enforce the partnership agreement, whether or not the partnership has itself manifested assent to the agreement.

(b) A person that becomes a partner is deemed to assent to the partnership agreement.

(c) Two (2) or more persons intending to become the initial partners of a limited partnership may make an agreement providing that upon the formation of the partnership, the agreement shall become the partnership agreement.

History.
Acts 2017, ch. 440, § 1.

61-3-106 Partnership agreement — Effect on third parties and relationship to records effective on behalf of limited partnership.

(a) A partnership agreement may specify that its amendment requires the approval of a person who is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Subject only to a court order issued under § 61-3-703(b)(2) to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:

(1) Is effective with regard to any debt, obligation, or other liability of the partnership or its partners to the person in the person's capacity as a

transferee or person dissociated as a partner; and

(2) Is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a partner.

(c) If a record delivered by a limited partnership to the secretary of state for filing becomes effective and contains a provision that would be ineffective under § 61-3-104(c) if contained in the partnership agreement, the provision is ineffective in the record.

(d) Subject to subsection (c), if a record delivered by a limited partnership to the secretary of state for filing becomes effective and conflicts with the partnership agreement:

(1) The agreement prevails as to partners, persons dissociated as partners, and transferees; and

(2) The record prevails as to other persons to the extent they reasonably rely on the record.

History.
Acts 2017, ch. 440, § 1.

61-3-107. Required information.

A limited partnership shall maintain at its principal office the following information:

(1) A current list showing the full name and last known street and mailing address, including zip codes, of each partner, separately identifying the general partners, and the limited partners;

(2) A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

(3) A copy of any filed articles of merger or conversion;

(4) A copy of the partnership's federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;

(5) A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

(6) A copy of any financial statement of the partnership for the three (3) most recent years;

(7) A copy of the three (3) most recent annual reports delivered by the partnership to the secretary of state pursuant to § 61-3-211;

(8) A copy of any record made by the partnership during the past three (3) years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

(9) Unless contained in a partnership agreement made in a record, a record stating:

(A) A description and statement of the agreed value of contributions other than money made and agreed to be made by each partner;

(B) The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

(C) For any person that is both a general partner and a limited partner,

a specification of what transferable interest the person owns in each capacity; and

(D) Any events upon the happening of which the partnership is to be dissolved and its activities and affairs wound up.

History.
Acts 2017, ch. 440, § 1.

61-3-108. Dual capacity.

A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

History.
Acts 2017, ch. 440, § 1.

61-3-109. Nature, purpose, and duration of limited partnership.

(a) A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

(b) A limited partnership may have any lawful purpose, regardless of whether for profit.

(c) A limited partnership has perpetual duration.

History.
Acts 2017, ch. 440, § 1.

61-3-110. Powers.

A limited partnership has the capacity to sue and be sued in the name of the partnership and the power to do all things necessary or convenient to carry on the partnership's activities and affairs.

History.
Acts 2017, ch. 440, § 1.

61-3-111. Supplemental principles of law.

Unless displaced by this chapter, the principles of law and equity supplement this chapter.

History.
Acts 2017, ch. 440, § 1.

61-3-112. Permitted names.

(a) The name of a limited partnership may contain the name of any partner,

but must not contain the phrases "corporation," "incorporated," "limited liability company," or abbreviations of like import.

(b) The name of a limited partnership that is not a limited liability limited partnership must contain the phrase "limited partnership" or the abbreviation "LP" or "L.P." and must not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P.".

(c) The name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and must not contain the abbreviation "LP" or "L.P.".

(d) The name of a limited partnership, and the name under which a foreign limited partnership may register to do business in this state, must be distinguishable on the records of the secretary of state from any:

(1) Name of an existing person whose formation required the filing of a record by the secretary of state and which is not at the time administratively dissolved;

(2) Name of a limited liability partnership whose statement of qualification is in effect;

(3) Name under which a person is registered to do business in this state by the filing of a record by the secretary of state;

(4) Name reserved under § 61-3-113 or other law of this state providing for the reservation of a name by the filing of a record by the secretary of state; and

(5) Name registered under § 61-3-114 or other law of this state providing for the registration of a name by the filing of a record by the secretary of state.

(e) A domestic or foreign limited partnership, or person acting on behalf of a limited partnership not yet formed, may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (d). The secretary of state shall authorize use of the indistinguishable name applied for, if:

(1) The person holding the right to use the previously filed name described in subsection (d) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of the name or change the name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The person holding the right to use the previously filed name described in subsection (d) consents in writing to the use of the name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

(f) In determining whether a name is the same as or not distinguishable on the records of the secretary of state from the name of another person, words, phrases, or abbreviations indicating the type of person, such as "corporation", "corp.", "incorporated", "Inc.", "professional corporation", "PC", "P.C.", "profes-

sional association", "PA", "P.A.", "Limited", "Ltd.", "limited partnership", "LP", "L.P.", "limited liability partnership", "LLP", "L.L.P.", "registered limited liability partnership", "RLLP", "R.L.L.P.", "limited liability limited partnership", "LLLP", "L.L.L.P.", "registered limited liability limited partnership", "RLLLP", "R.L.L.L.P.", "limited liability company", "LLC", "L.L.C.", "limited cooperative association", "limited cooperative", "LCA", or "L.C.A." must not be taken into account.

(g) The name of a limited partnership or foreign limited partnership must not contain language stating or implying that the limited partnership or foreign limited partnership:

(1) Transacts or has the power to transact any business for which authorization, in whatever form and however denominated, is required under the laws of this state, unless the appropriate commission or official has granted the authorization and certifies that fact to the secretary of state in writing;

(2) Is formed as, affiliated with or sponsored by, any fraternal, veterans', service, religious, charitable or professional organization, unless the formation, affiliation or sponsorship is certified in writing to the secretary of state by the body authorizing the formation or the organization with which affiliation or sponsorship is claimed, as applicable; or

(3) Is an agency or instrumentality of, affiliated with or sponsored by the United States, any state, or a subdivision or agency of the United States, unless the fact is certified in writing to the secretary of state by the appropriate official of the United States, the state, or the subdivision or agency, as applicable.

(h) A limited partnership or foreign limited partnership may use a name that is not distinguishable from a name described in subdivisions (d)(1)-(5) if the partnership delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the partnership to use the name in this state.

History.
Acts 2017, ch. 440, § 1.

61-3-113. Reservation of name.

(a) A person may reserve the exclusive use of a name that complies with § 61-3-112 by delivering an application to the secretary of state for filing. The application must state the name and address of the applicant and the name to be reserved. If the secretary of state finds that the name is available, the secretary of state shall reserve the name for the applicant's exclusive use for one hundred twenty (120) days.

(b) The owner of a reserved name may transfer the reservation to another person by delivering to the secretary of state a signed notice in a record of the transfer which states the name and address of the person to which the reservation is being transferred.

(c) The reservation of a specific name may be cancelled by filing with the secretary of state a notice, executed by the applicant or transferee, specifying

the name reservation to be cancelled and the name and address of the applicant or transferee.

History.
Acts 2017, ch. 440, § 1.

61-3-114 Registration of name.

(a) A foreign limited partnership not registered to do business in this state under part 10 of this chapter may register its name, or an alternate name adopted pursuant to § 61-3-1006, if the name is distinguishable on the records of the secretary of state from the names that are not available under § 61-3-112.

(b)(1) To register its name or an alternate name adopted pursuant to § 61-3-1006, a foreign limited partnership must deliver to the secretary of state for filing an application:

(A) Stating the partnership's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to § 61-3-1006; and

(B) Accompanied by a certificate of existence, or a document of similar import, from the jurisdiction of formation, bearing a date that is not more than one (1) month prior to the date the application is filed with the secretary of state.

(2) If the secretary of state finds that the name applied for is available, the secretary of state must register the name for the applicant's exclusive use.

(c) The registration of a name under this section is effective for one (1) year after the date of registration.

(d) A foreign limited partnership whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three (3) months before the expiration of the registration, to the secretary of state for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.

(e) A foreign limited partnership whose name registration is effective may register as a foreign limited partnership under the registered name or consent in a signed record to the use of that name by another person that is not an individual.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, § 4.

Amendments.
The 2018 amendment, in (b), divided the former first sentence as the present introductory clause and (b)(1)(A) by substituting "application: (A) Stating the" for "application stating the", added present (b)(1)(B), and redesignated the former last sentence as present (b)(2).

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-115. Registered agent.

(a) Each limited partnership and each registered foreign limited partnership shall designate and maintain a registered agent in this state. The designation of a registered agent is an affirmation of fact by the limited partnership or registered foreign limited partnership that the agent has consented to be served.

(b) A registered agent for a limited partnership or registered foreign limited partnership must have a place of business in this state.

(c) The only duties under this chapter of a registered agent that has complied with this chapter are:

(1) To forward to the limited partnership or registered foreign limited partnership at the address most recently supplied to the agent by the partnership or foreign partnership any process, notice, or demand pertaining to the partnership or foreign partnership which is served on or received by the agent;

(2) If the registered agent resigns, to provide the notice required by § 61-3-117(a)(4) to the partnership or foreign partnership at the address most recently supplied to the agent by the partnership or foreign partnership; and

(3) To keep current the information with respect to the agent in the certificate of limited partnership.

History.
Acts 2017, ch. 440, § 1.

61-3-116. Change of registered agent or address for registered agent by limited partnership.

(a) A limited partnership or registered foreign limited partnership may change its registered agent or the address of its registered agent by delivering to the secretary of state for filing a statement of change that states:

(1) The name of the limited partnership or registered foreign limited partnership;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office and zip code for the office, and the county in which the office is located;

(4) The name of its current registered agent; and

(5) If the current registered agent is to be changed, the name of the new registered agent.

(b) The general or limited partners of a limited partnership need not approve the delivery to the secretary of state for filing of:

(1) A statement of change under this section; or

(2) A similar filing changing the registered agent or registered office, if any, of the partnership in any other jurisdiction.

(c) A statement of change under this section designating a new registered agent is an affirmation of fact by the limited partnership or registered foreign limited partnership that the agent has consented to serve.

(d) As an alternative to using the procedure in this section, a limited partnership may amend its certificate of limited partnership.

History.
Acts 2017, ch. 440, § 1.

61-3-117. Resignation of registered agent.

(a) A registered agent may resign as an agent for a limited partnership or registered foreign limited partnership by delivering to the secretary of state for filing a statement of resignation that states:

(1) The name of the limited partnership or registered foreign limited partnership;

(2) The name of the agent;

(3) That the agent resigns from serving as registered agent for the limited partnership or registered foreign limited partnership; and

(4) A certification that the registered agent has mailed a copy of the statement to the principal office of the limited partnership by certified mail.

(b) The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary of state. When a statement of resignation takes effect, the registered agent ceases to have responsibility under this chapter for any matter thereafter tendered to it as agent for the limited partnership or registered foreign limited partnership. The resignation does not affect any contractual rights the limited partnership or registered foreign limited partnership has against the agent or that the agent has against the limited partnership or registered foreign limited partnership.

(c) A registered agent may resign with respect to a limited partnership or registered foreign limited partnership whether or not the limited partnership or registered foreign limited partnership is active and in good standing as reflected in the records of the secretary of state.

(d) If a registered agent resigns or is unable to perform its duties, the designating limited partnership must, not later than sixty (60) days after the resignation or discovery that the agent is unable to perform its duties, designate another registered agent to the end that it shall at all times have a registered agent in this state.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, § 5.

Amendments.
The 2018 amendment substituted "is active and in good standing as reflected in the records of the secretary of state" for "is in good standing" at the end of (c).

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

Cross-References.
Certified mail in lieu of registered mail, § 1-3-111.

61-3-118. Change of name or address by registered agent.

(a) If a registered agent changes the street address of the registered agent's business office, the agent shall deliver to the secretary of state for filing a statement of change that states:

(1) The name of the limited partnership or registered foreign limited partnership represented by the registered agent;

(2) The name of the agent as currently shown in the records of the secretary of state for the limited partnership or registered foreign limited partnership; and

(3) The agent's new street address including the zip code of its new registered office; and a mailing address such as a post office box if the United

States postal service does not deliver to the new registered office; and the county in which the office is located.

(b) A registered agent shall promptly furnish notice to the represented limited partnership or registered foreign limited partnership of the filing by the secretary of state of the statement of change and the changes made by the statement.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, § 6.

Amendments.
The 2018 amendment, in (a), substituted "the street address of the registered agent's business office" for "its name or address" in the introductory language; rewrote (3) which read: "If the name of the agent has changed, the agent's new name; and"; and deleted former (4) which read: "If the address of the agent has changed, the agent's new address and a mailing address, such as a post office box if the United States postal service does not deliver to the agent's street address."

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-119. Service of process, notice, or demand.

(a) A limited partnership's registered agent is the limited partnership's agent for service of process, notice, or demand required or permitted by law to be served on the limited partnership.

(b) The secretary of state shall be an agent of a limited partnership upon whom any process, notice, or demand may be served when:

(1) A domestic or foreign limited partnership authorized to do business in this state fails to appoint or maintain a registered agent in this state;

(2) Its registered agent cannot be found with reasonable diligence;

(3) A foreign limited partnership transacts business or conducts affairs in this state without first submitting an application for registration with the secretary of state; or

(4) The registration of a foreign limited partnership has been cancelled.

(c) Whenever a domestic or foreign limited partnership authorized to do business in this state is an employer within the meaning of the Workers' Compensation Law, compiled in title 50, chapter 6, and the limited partnership is, for the purpose of workers' compensation, self-insured or a part of a self-insurance pool as provided in title 50, chapter 6, part 4, the limited partnership shall, for workers' compensation actions only, be required to appoint the commissioner of commerce and insurance and the commissioner's chief deputy, or their successors, as its true and lawful attorneys upon either of whom all lawful process in any such action or legal proceeding may be served, as is required of insurance companies by title 56, chapter 2.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a limited partnership.

History.
Acts 2017, ch. 440, § 1.

61-3-120. Delivery of record.

(a) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, mail, conventional commercial practice, and electronic transmission.

(b) Delivery to the secretary of state is effective only when a record is received by the secretary of state.

History.
Acts 2017, ch. 440, § 1.

61-3-121. Service on secretary of state.

(a) Service on the secretary of state, when the secretary of state is an agent for a domestic or foreign limited partnership as provided in § 61-3-119(b), of any process, notice or demand must be made by delivering to the secretary of state the original and one (1) copy of the process, notice, or demand, duly certified by the clerk of the court in that the suit or action is pending or brought, together with the proper fee. A statement that identifies which of the grounds listed in § 61-3-119(b) for service on the secretary of state must be included. The secretary of state shall endorse the time of receipt upon the original and copy and shall immediately send the copy, along with a written notice that service of the original was also made, by registered or certified mail, with return receipt requested, addressed to the limited partnership at its registered office or principal office, or designated alternative mailing address, as shown in the records on file in the secretary of state's office or as shown in the official registry of the state or country in which the limited partnership is formed. If none of the addresses described in the previous sentence are available to the secretary of state, service may be made to any one (1) of the general partners at the address set forth in the certificate of limited partnership. The secretary of state may require the plaintiff, or complainant as the case may be, or the plaintiff's attorney, to furnish the latter address.

(b) The refusal or failure of the limited partnership to accept delivery of the registered or certified mail provided for in subsection (a), or the refusal or failure to sign the return receipt, does not affect the validity of the service, and any limited partnership refusing or failing to accept delivery of registered or certified mail shall be charged with knowledge of the contents of any process, notice, or demand contained in the registered or certified mail.

(c) When the registered or certified mail return receipt is received by the secretary of state or when a limited partnership refuses or fails to accept delivery of the registered or certified mail and it is returned to the secretary of state, the secretary of state shall forward the receipt or the refused or undelivered mail to the clerk of the court in which the suit or action is pending, together with the original process, notice, or demand, a copy of the notice the secretary of state sent to the defendant limited partnership and the affidavit setting forth compliance with this section. Upon receipt thereof, the clerk shall copy the affidavit on the rule docket of the court and shall mark it, the receipt or refused or undelivered mail, and the copy of notice as of the day received and place them in the file of the suit or action where the process and pleadings are kept, and the receipt or refused or undelivered mail, affidavit, and copy of notice shall be and become a part of the technical record in the suit or action, and service on the defendant shall be complete. Service made under this section has the same legal force and validity as if the service had been made personally in this state.

(d) Subsequent pleadings or papers permitted or required to be served on a defendant domestic or foreign limited partnership may be served on the secretary of state as agent for the defendant limited partnership in the same manner, at the same cost and with the same effect as process, notice or demand are served on the secretary of state as agent for the defendant limited partnership under this section.

(e) No appearance is required in the suit or action by the defendant domestic or foreign limited partnership nor shall any judgment be taken against the domestic or foreign limited partnership in less than one (1) month after the date service is completed under this section.

(f) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, which record shall include the time of the service and the action with reference thereto.

History.
Acts 2017, ch. 440, § 1.

Cross-References.
Certified mail in lieu of registered mail, § 1-3-111.

PART 2

FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP AND FILINGS

61-3-201. Formation of limited partnership — Certificate of limited partnership.

(a) To form a limited partnership, a person must deliver a certificate of limited partnership to the secretary of state for filing.

(b) A certificate of limited partnership must state:

(1) The name of the limited partnership, that complies with § 61-3-112;

(2) The street and mailing addresses of the partnership's principal office; the address of its principal office, and a mailing address such as a post office box if the United States postal service does not deliver to the principal office;

(3) If the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership is required to maintain; the name of the limited partnership's initial registered agent and street and addresses in this state of the partnership's registered office and the county in which the registered office is located;

(4) The name and street and mailing addresses of each general partner, and a mailing address such as a post office box if the United States postal service does not deliver to the general partner's address; and

(5) Whether the limited partnership is a limited liability limited partnership.

(c) A certificate of limited partnership may contain statements as to matters other than those required by subsection (b), but must not vary or otherwise affect § 61-3-104(c) and (d) in a manner inconsistent with that section.

(d) The partnership agreement must not be filed.

(e) A limited partnership is formed when:

(1) The initial certificate of limited partnership is filed with the secretary of state or at any later date or time specified in the certificate of limited partnership in accordance with and subject to § 61-3-207;

(2) At least two (2) persons have become partners;

(3) At least one (1) person has become a general partner; and

(4) At least one (1) person has become a limited partner.

History.
Acts 2017, ch. 440, § 1.

61-3-202. Amendment or restatement of certificate of limited partnership.

(a) A certificate of limited partnership may be amended or restated at any time.

(b) To amend its certificate of limited partnership, a limited partnership must deliver to the secretary of state for filing an amendment stating:

(1) The name of the partnership; and

(2) The text of the amendment.

(c) To restate its certificate of limited partnership, a limited partnership must deliver to the secretary of state for filing a restatement, designated as such in its heading.

(d) A limited partnership shall, not later than sixty (60) days after the happening of any of the following events, deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect:

(1) The admission of a new general partner;

(2) The dissociation of a person as a general partner; or

(3) The appointment of a person to wind up the limited partnership's activities and affairs under § 61-3-802(c) or (d).

(e) If a general partner knows that any information in a filed certificate of limited partnership was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the general partner must, not later than sixty (60) days after the general partner obtains such knowledge:

(1) Cause the certificate to be amended; or

(2) If appropriate, deliver to the secretary of state for filing a statement of change under § 61-3-116 or a statement of correction under § 61-3-208.

History.
Acts 2017, ch. 440, § 1.

61-3-203. Signing of records to be delivered for filing to secretary of state.

(a) The following records delivered to the secretary of state for filing pursuant to this chapter must be signed as follows:

(1) An initial certificate of limited partnership must be signed by all general partners listed in the certificate;

(2) An amendment to the certificate of limited partnership adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate;

(3) An amendment to the certificate of limited partnership designating as general partner a person admitted under § 61-3-801(a)(3)(B) following the dissociation of a limited partnership's last general partner must be signed by that person;

(4) An amendment to the certificate of limited partnership required by § 61-3-802(c) following the appointment of a person to wind up the dissolved limited partnership's activities and affairs must be signed by that person;

(5) Any other amendment to the certificate of limited partnership must be signed by:

(A) At least one (1) general partner listed in the certificate;

(B) Each person designated in the amendment as a new general partner; and

(C) Each person that the amendment indicates has dissociated as a general partner, unless:

(i) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or

(ii) The person has previously delivered to the secretary of state for filing a statement of dissociation;

(6) A restated certificate of limited partnership must be signed by at least one (1) general partner listed in the certificate, and, to the extent the restated certificate effects a change to any other record under this subsection (a), the certificate must be signed in a manner that satisfies the applicable subdivision;

(7) A statement of termination must be signed by all general partners listed in the certificate of limited partnership or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to § 61-3-802(c) or (d) to wind up the dissolved limited partnership's activities and affairs;

(8) Any other record delivered by a limited partnership to the secretary of state for filing must be signed by at least one (1) general partner listed in the certificate of limited partnership;

(9) A statement by a person pursuant to § 61-3-605(a)(3) stating that the person has dissociated as a general partner must be signed by that person;

(10) A statement of negation by a person pursuant to § 61-3-306 must be signed by that person; and

(11) Any other record delivered on behalf of a person to the secretary of state for filing must be signed by that person.

(b) Any record delivered for filing under this chapter may be signed by an agent, including an attorney in fact. An authorization, including a power of attorney, to sign any record or to enter into a partnership agreement or amendment of the partnership agreement must be in writing, but need not be sworn to, verified, or acknowledged, and need not be filed in the office of the secretary of state, but if in writing, must be retained by a general partner. Whenever this chapter requires a particular individual to sign a record and the

individual is deceased or incompetent, the record may be signed by a legal representative of the individual.

History.
Acts 2017, ch. 440, § 1.

61-3-204. Signing and filing pursuant to judicial order.

(a) If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing under this chapter does not do so, any other person that is aggrieved may petition the appropriate court to order:

(1) The person to sign the record;

(2) The person to deliver the record to the secretary of state for filing; or

(3) The secretary of state to file the record unsigned.

(b) For purposes of subsection (a), the appropriate court is:

(1) For actions brought under subdivisions (a)(1) and (a)(2), either:

(A) The chancery court for the county in which the partnership maintains its principal office; or

(B) The chancery court of Davidson County; and

(2) For actions brought under subdivision (a)(3), the chancery court of Davidson County.

(c) If a petitioner under subsection (a) is not the limited partnership or foreign limited partnership to which the record pertains, the petitioner must make the limited partnership or foreign limited partnership a party to the action.

(d) A record filed under subdivision (a)(3) is effective without being signed.

History.
Acts 2017, ch. 440, § 1.

61-3-205. Liability for materially false information in filed record.

(a) If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains materially false information, a person that suffers loss by reliance on the information may recover damages for the loss from a general partner if:

(1)(A) The record was delivered for filing on behalf of the partnership; and

(B) The general partner knew or had notice of the materially false statement for a reasonably sufficient time before the information was relied upon so that, before the reliance, the general partner reasonably could have:

(i) Effected an amendment under § 61-3-202;

(ii) Filed a petition under § 61-3-204; or

(iii) Delivered to the secretary of state for filing a statement of change under § 61-3-116 or a statement of correction under § 61-3-208; or

(2) After filing, that general partner knew that any arrangement or other fact described in the certificate is materially false in any respect or has changed making the statement materially false, if that general partner had reasonably sufficient time before the information was relied upon to have:

(A) Effected an amendment under § 61-3-202;

(B) Filed a petition under § 61-3-204; or

(C) Delivered to the secretary of state for filing a statement of change under § 61-3-116 or a statement of correction under § 61-3-208.

(b) No general partner has any liability for failing to cause the amendment, correction, or cancellation of a certificate to be filed or failing to file a petition for its amendment, correction, or cancellation pursuant to subsection (a) if the certificate of amendment, certificate of cancellation, or petition is filed within ninety (90) days of when the general partner knew or should have known that the statement in the certificate was false in any material respect.

History.
Acts 2017, ch. 440, § 1.

61-3-206. Filing requirements.

(a) To be filed by the secretary of state pursuant to this chapter, a record must be received by the secretary of state, must comply with this chapter, and satisfy the following:

(1) The filing of the record must be required or permitted by this chapter;

(2) The record must be physically delivered in written form unless and to the extent the secretary of state permits electronic delivery of the record;

(3) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals;

(4) The record must be signed by a person authorized or required under this chapter to sign the record; and

(5) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.

(b) If law other than this chapter prohibits the disclosure by the secretary of state of information contained in a record delivered to the secretary of state for filing, the secretary of state must file the record if the record otherwise complies with this chapter but may redact the information.

(c) When a record is delivered to the secretary of state for filing, any fee required under this chapter and any fee, tax, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the secretary of state or by that law.

(d) The secretary of state may require that a record delivered in written form be accompanied by an identical or conformed copy.

(e) The secretary of state may provide forms for filings required or permitted to be made by this chapter, but, except as otherwise provided in subsection (f), their use is not required.

(f) The secretary of state may require that a cover sheet for a filing be on a form prescribed by the secretary of state.

(g) The secretary of state has the power to promulgate appropriate rules establishing acceptable methods for execution of any document to be filed with the secretary of state.

History.
Acts 2017, ch. 440, § 1.

61-3-207. Effective date and time.

Subject to § 61-3-209(d), a record filed under this chapter is effective:

(1) On the date and at the time of its filing by the secretary of state, as provided in § 61-3-209(b);

(2) On the date of filing and at the time specified in the record as its effective time, if later than the time described in subdivision (a)(1);

(3) At a specified delayed effective date and time, which may not be more than ninety (90) days after the date of filing; or

(4) If a delayed effective date is specified, but no time is specified, at 4:30 p.m. on the date specified, which may not be more than ninety (90) days after the date of filing.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, § 7.

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

Amendments.
The 2018 amendment substituted "4:30 p.m." for "12:01 a.m." in (4).

61-3-208. Correcting filed record.

(a) A person on whose behalf a filed record was delivered to the secretary of state for filing may correct the record if:

(1) The record at the time of filing was inaccurate;

(2) The record was defectively signed; or

(3) The electronic transmission of the record to the secretary of state was defective.

(b) A record is corrected by delivering to the secretary of state for filing a statement of correction that:

(1) Does not state a delayed effective date;

(2) Is signed by the person correcting the filed record;

(3) Identifies the filed record to be corrected, including its filing date, or has attached to the statement of correction a copy of the filed record;

(4) Specifies the inaccuracy or defect to be corrected and the reason it is incorrect; and

(5) Corrects the inaccuracy or defect in the filed record.

(c) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of § 61-3-102(d) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

History.
Acts 2017, ch. 440, § 1.

61-3-209. Duty of secretary of state to file — Review of refusal to file — Delivery of record by secretary of state.

(a) The secretary of state shall file a record delivered to the secretary of state for filing that satisfies this chapter. The duty of the secretary of state under this section is ministerial.

(b) When the secretary of state files a record, the secretary of state must record it as filed on the date and at the time of its delivery. After filing a record, the secretary of state shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing.

(c) If the secretary of state refuses to file a record, the secretary of state must, not later than fifteen (15) business days after the record is delivered:

(1) Return the record or notify the person that submitted the record of the refusal; and

(2) Provide a brief explanation in a record of the reason for the refusal.

(d)(1) If the secretary of state refuses to file a record, the person that submitted the record may petition the chancery court of Davidson County to compel filing of the record. The record and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(2) Any judicial review of the secretary of state's refusal to file a record must be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) The filing of or refusal to file a record does not:

(1) Affect the validity or invalidity of the record in whole or in part; or

(2) Create a presumption that the information contained in the record is correct or incorrect.

(f) Except as otherwise provided in § 61-3-119 or by law other than this chapter, the secretary of state may deliver any record to a person by delivering it:

(1) In person to the person that submitted it;

(2) To the address of the person's registered agent;

(3) To the principal office of the person; or

(4) To another address, including an electronic mail address, the person provides to the secretary of state for delivery.

History.
Acts 2017, ch. 440, § 1.

61-3-210. Certificate of existence or registration.

(a) On request of any person, the secretary of state must issue a certificate of existence for a limited partnership or a certificate of registration for a registered foreign limited partnership.

(b) A certificate under subsection (a) must state:

(1) The limited partnership's name or the registered foreign limited partnership's name used in this state;

(2) In the case of a limited partnership:

(A) That a certificate of limited partnership has been filed and has taken effect;

(B) The date the certificate became effective;

(C) The period of the partnership's duration if the records of the secretary of state reflect that its period of duration is less than perpetual; and

(D) That:

(i) No statement of administrative dissolution, or statement of termination has been filed; and

(ii) The records of the secretary of state do not otherwise reflect that the partnership has been dissolved or terminated;

(3) In the case of a registered foreign limited partnership, that the registered foreign limited partnership is registered to do business in this state;

(4) That all fees, taxes, interest, and penalties owed to this state by the limited partnership or the foreign limited partnership have been paid, if:

(A) Payment is reflected in the records of the secretary of state; and

(B) Nonpayment affects the existence or registration of the limited partnership or foreign limited partnership; and

(5) Other facts reflected in the records of the secretary of state pertaining to the limited partnership or foreign limited partnership that the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated in the certificate, a certificate issued by the secretary of state under subsection (a) may be relied on as conclusive evidence of the facts stated in the certificate.

History.
Acts 2017, ch. 440, § 1.

61-3-211. Annual report for secretary of state.

(a) A limited partnership or registered foreign limited partnership shall deliver to the secretary of state for filing an annual report that states:

(1) The name of the limited partnership or foreign limited partnership;

(2) The name of its registered agent in this state;

(3) The street address and zip code of its registered office and the name of its registered agent at that office in this state;

(4) The name of at least one (1) general partner; and

(5) In the case of a foreign limited partnership, its jurisdiction of formation and any alternate name adopted under § 61-3-1006(a).

(b) Information in the annual report must be current as of the date the report is signed by the limited partnership or registered foreign limited partnership.

(c) Every limited partnership and registered foreign limited partnership shall file the annual report with the secretary of state on or before the first day of the fourth month following the close of the limited partnership or registered foreign limited partnership's fiscal year.

(d) If an annual report does not contain the information required by this section, the secretary of state must promptly notify the reporting limited partnership or registered foreign limited partnership in a record and return the report for correction.

(e) If an annual report contains the name or address of a registered agent that differs from the information shown in the records of the secretary of state immediately before the report becomes effective, the differing information is considered a statement of change under § 61-3-116.

(f) If an annual report contains a street or mailing address for the principal office that differs from the information shown in the records of the secretary of

state immediately before the report becomes effective, the differing information is considered a statement of change under § 61-3-116.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, § 8.

Amendments.
The 2018 amendment rewrote (a)(3) which read: "The street address, including the zip code, of its principal office and a mailing address, such as a post office box if the United States postal service does not deliver mail to the principal office."

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

PART 3

LIMITED PARTNERS

61-3-301. Becoming limited partner.

(a) Upon formation of a limited partnership, a person becomes a limited partner as agreed among the persons that are to be the initial partners.

(b) After formation, a person becomes a limited partner:

(1) As provided in the partnership agreement;

(2) As the result of a transaction effective under part 11 of this chapter;

(3) With the affirmative vote or consent of all the partners; or

(4) As provided in § 61-3-801(a)(4) or (a)(5).

(c) A person may become a limited partner without:

(1) Acquiring a transferable interest; or

(2) Making or being obligated to make a contribution to the limited partnership.

History.
Acts 2017, ch. 440, § 1.

61-3-302. No agency power of limited partner as limited partner.

(a) A limited partner is not an agent of a limited partnership solely by reason of being a limited partner.

(b) A person's status as a limited partner does not prevent or restrict law other than this chapter from imposing liability on a limited partnership because of the person's conduct.

History.
Acts 2017, ch. 440, § 1.

61-3-303. No liability as limited partner for limited partnership obligations.

(a) A debt, obligation, or other liability of a limited partnership is not the debt, obligation, or other liability of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the partnership solely by reason of being or acting as a limited partner, even if the limited partner participates in the management and control of the limited partnership. This subsection (a) applies regardless of the dissolution of the partnership.

(b) Neither the failure of a limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs nor the failure of a limited partnership to maintain the information required under § 61-3-107 is a ground for imposing liability on a limited partner for a debt, obligation, or other liability of the partnership.

(c) Notwithstanding any provision in this chapter to the contrary, a limited partner, or in the case of a limited liability limited partnership, a general partner may elect to become liable for the obligations of the partnership by complying with § 67-4-2008(b).

History.
Acts 2017, ch. 440, § 1.

61-3-304. Rights to information of limited partner and person dissociated as limited partner.

(a) On ten-days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office. The limited partner need not have any particular purpose for seeking the information.

(b) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may inspect and copy information regarding the activities, affairs, financial condition, and other circumstances of the limited partnership as is just and reasonable if:

(1) The limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;

(2) The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(3) The information sought is directly connected to the limited partner's purpose.

(c) Not later than ten (10) days after receiving a demand pursuant to subsection (b), the limited partnership shall inform in a record the limited partner that made the demand of:

(1) What information the partnership will provide in response to the demand, and when and where the partnership will provide the information; and

(2) The partnership's reasons for declining, if the partnership declines to provide any demanded information.

(d) Whenever this chapter or a partnership agreement provides for a limited partner to vote on or give or withhold consent to a matter, before the vote is cast or consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information that is known to the partnership and is material to the limited partner's decision.

(e) Subject to subsection (j), on ten-days' demand made in a record received by a limited partnership, a person dissociated as a limited partner may have access to information to which the person was entitled while a limited partner if:

(1) The information pertains to the period during which the person was a

limited partner;

(2) The person seeks the information in good faith; and

(3) The person satisfies the requirements imposed on a limited partner by subsection (b).

(f) A limited partnership shall respond to a demand made pursuant to subsection (e) in the manner provided in subsection (c).

(g) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(h) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the partnership agreement or under subsection (j) applies both to the agent or legal representative and to the limited partner or person dissociated as a limited partner.

(i) Subject to § 61-3-704, the rights under this section do not extend to a person as transferee.

(j) In addition to any restriction or condition stated in its partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection (j), the partnership has the burden of proving reasonableness.

History.
Acts 2017, ch. 440, § 1.

Cross-References.
Confidentiality of public records, § 10-7-504.

61-3-305. Limited duties of limited partners.

(a) A limited partner shall discharge any duties to the partnership and the other partners under the partnership agreement and exercise any rights under this chapter or the partnership agreement consistently with the contractual obligation of good faith and fair dealing.

(b) Except as otherwise provided in subsection (a), a limited partner does not have any duty to the limited partnership or to any other partner solely by reason of acting as a limited partner.

(c) If a limited partner enters into a transaction with a limited partnership, the limited partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

History.
Acts 2017, ch. 440, § 1.

61-3-306. Person erroneously believing self to be limited partner.

(a) Except as otherwise provided in subsection (b), a person that makes an investment in a business enterprise and erroneously, but in good faith, believes that the person has become a limited partner in the enterprise is not liable for

the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

(1) Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing; or

(2) Withdraws from future participation as an owner in the enterprise by signing and delivering to the secretary of state for filing a statement of negation under this section.

(b) A person that makes an investment described in subsection (a) is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the secretary of state files a statement of negation, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

(c) If a person makes a diligent effort in good faith to comply with subdivision (a)(1) and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, the person has the right to withdraw from the enterprise pursuant to subdivision (a)(2) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

History.
Acts 2017, ch. 440, § 1.

PART 4

GENERAL PARTNERS

61-3-401. Becoming general partner.

(a) Upon formation of a limited partnership, a person becomes a general partner as agreed among the persons that are to be the initial partners.

(b) After formation of a limited partnership, a person becomes a general partner:

(1) As provided in the partnership agreement;

(2) As the result of a transaction effective under part 11 of this chapter;

(3) With the affirmative vote or consent of all the partners; or

(4) As provided in § 61-3-801(a)(3)(B).

(c) A person may become a general partner without:

(1) Acquiring a transferable interest; or

(2) Making or being obligated to make a contribution to the partnership.

History.
Acts 2017, ch. 440, § 1.

61-3-402. General partner agent of limited partnership.

(a) Each general partner is an agent of the limited partnership for the purposes of the limited partnership's activities and affairs. An act of a general

partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course of the partnership's activities and affairs, or activities and affairs of the kind carried on by the partnership, binds the partnership, unless the general partner did not have authority to act for the partnership in the particular matter and the person with which the general partner was dealing knew or had notice that the general partner lacked authority.

(b) An act of a general partner that is not apparently for carrying on in the ordinary course of the limited partnership's activities and affairs, or activities and affairs of the kind carried on by the partnership, binds the partnership only if the act was actually authorized by all the other partners.

History.
Acts 2017, ch. 440, § 1.

61-3-403. Limited partnership liable for general partner's actionable conduct.

(a) A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of the limited partnership's activities and affairs or with the actual or apparent authority of the limited partnership.

(b) If, in the course of a limited partnership's activities and affairs, or while acting with actual or apparent authority of the partnership, a general partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the partnership is liable for the loss.

History.
Acts 2017, ch. 440, § 1.

61-3-404. General partner's liability.

(a) Except as otherwise provided in subsections (b) and (c), all general partners are liable jointly and severally for all debts, obligations, and other liabilities of the limited partnership unless otherwise agreed by the claimant or provided by law.

(b) A person that becomes a general partner is not personally liable for a debt, obligation, or other liability of the limited partnership incurred before the person became a general partner.

(c) A debt, obligation, or other liability of a limited partnership incurred while the limited partnership is a limited liability limited partnership is solely the debt, obligation, or other liability of the limited liability limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability limited partnership solely by reason of being or acting as a general partner. This subsection (c) applies:

(1) Despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability limited partnership under § 61-3-406(b)(2); and

(2) Regardless of the dissolution of the partnership.

(d) The failure of a limited liability limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a general partner for a debt, obligation, or other liability of the partnership.

(e) An amendment of a certificate of limited partnership deleting a statement that the limited partnership is a limited liability limited partnership does not affect the limitation in this section on the liability of a general partner for a debt, obligation, or other liability of the limited partnership incurred before the amendment became effective.

History.
Acts 2017, ch. 440, § 1.

61-3-405. Actions by and against partnership and partners.

(a) To the extent not inconsistent with § 61-3-404, a general partner may be joined in an action against the limited partnership or named in a separate action.

(b) A judgment against a limited partnership is not, by itself, a judgment against a general partner. A judgment against a partnership must not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(c) A judgment creditor of a general partner shall not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under § 61-3-404; and

(1) A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) The partnership is a debtor in bankruptcy;

(3) The general partner has agreed that the creditor need not exhaust partnership assets;

(4) A court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) Liability is imposed on the general partner by law or contract independent of the existence of the partnership.

History.
Acts 2017, ch. 440, § 1.

61-3-406. Management rights of general partner.

(a) Each general partner has equal rights in the management and conduct of the limited partnership's activities and affairs. Except as otherwise provided in this chapter, any matter relating to the activities and affairs of the

partnership is decided exclusively by the general partner or, if there is more than one (1) general partner, by a majority of the general partners.

(b) The affirmative vote or consent of all the partners is required to:

(1) Amend the partnership agreement;

(2) Amend the certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership; and

(3) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities and affairs.

(c) A limited partnership shall reimburse a general partner for an advance to the partnership beyond the amount of capital the general partner agreed to contribute.

(d) A payment or advance made by a general partner which gives rise to a limited partnership obligation under subsection (c) or § 61-3-408(a) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

(e) A general partner is not entitled to remuneration for services performed for the limited partnership.

History.
Acts 2017, ch. 440, § 1.

61-3-407. Rights to information of general partner and person dissociated as general partner.

(a) A general partner may inspect and copy required information during regular business hours in the limited partnership's principal office, without having any particular purpose for seeking the information.

(b) On reasonable notice, a general partner may inspect and copy during regular business hours, at a reasonable location specified by the limited partnership, any record maintained by the partnership regarding the partnership's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the general partner's rights and duties under the partnership agreement or this chapter.

(c) A limited partnership shall furnish to each general partner:

(1) Without demand, any information concerning the partnership's activities, affairs, financial condition, and other circumstances that the partnership knows and is material to the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter, except to the extent the partnership can establish that the partnership reasonably believes the general partner already knows the information; and

(2) On demand, any other information concerning the partnership's activities, affairs, financial condition, and other circumstances, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(d) The duty to furnish information under subsection (c) also applies to each general partner to the extent the general partner knows any of the information described in subsection (b).

(e) Subject to subsection (j), on ten-days' demand made in a record received by a limited partnership, a person dissociated as a general partner may have access to the information and records described in subsections (a) and (b) at the locations specified in those subsections if:

(1) The information or record pertains to the period during which the person was a general partner;

(2) The person seeks the information or record in good faith; and

(3) The person satisfies the requirements imposed on a limited partner by § 61-3-304(b).

(f) A limited partnership shall respond to a demand made pursuant to subsection (e) in the manner provided in § 61-3-304(c).

(g) A limited partnership may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(h) A general partner or person dissociated as a general partner may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the partnership agreement or under subsection (j) applies both to the agent or legal representative and to the general partner or person dissociated as a general partner.

(i) The rights under this section do not extend to a person as transferee, but if:

(1) A general partner dies, § 61-3-704 applies; and

(2) An individual dissociates as a general partner under § 61-3-603(6)(B) or (C), the legal representative of the individual may exercise the rights under subsection (c) of a person dissociated as a general partner.

(j) In addition to any restriction or condition stated in the partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection (j), the partnership has the burden of proving reasonableness.

History.
Acts 2017, ch. 440, § 1.

Cross-References.
Confidentiality of public records, § 10-7-504.

61-3-408. Reimbursement — Indemnification — Advancement — Insurance.

(a) A limited partnership shall reimburse a general partner for any payment made by the general partner in the course of the general partner's activities on behalf of the partnership, if the general partner complied with §§ 61-3-406, 61-3-409, and 61-3-504 in making the payment.

(b) A limited partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a general partner, if the claim, demand, debt, obligation, or

other liability does not arise from the person's breach of § 61-3-406, § 61-3-409, or § 61-3-504.

(c) In the ordinary course of its activities and affairs, a limited partnership may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a general partner, if the person promises to repay the partnership if the person ultimately is determined not to be entitled to be indemnified under subsection (b).

(d) A limited partnership may purchase and maintain insurance on behalf of a general partner against liability asserted against or incurred by the general partner in that capacity or arising from that status even if, under § 61-3-104, the partnership agreement could not eliminate or limit the person's liability to the partnership for the conduct giving rise to the liability.

History.
Acts 2017, ch. 440, § 1.

61-3-409. Standards of conduct for general partners.

(a) A general partner owes to the limited partnership and, subject to § 61-3-901, the other partners, only the duties of loyalty and care stated in subsections (b) and (c).

(b) The fiduciary duty of loyalty of a general partner includes the duties:

(1) To account to the limited partnership and hold as trustee for the limited partnership any property, profit, or benefit derived by the general partner:

(A) In the conduct or winding up of the partnership's activities and affairs;

(B) From a use by the general partner of the partnership's property; or

(C) From the appropriation of a partnership opportunity;

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership's activities and affairs as or on behalf of a person having an interest adverse to the partnership; and

(3) To refrain from competing with the partnership in the conduct or winding up of the partnership's activities and affairs.

(c) The duty of care of a general partner in the conduct or winding up of the limited partnership's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or knowing violation of law.

(d) A general partner shall discharge the duties and obligations under this chapter or under the partnership agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement solely because the general partner's conduct furthers the general partner's own interest.

(f) All the partners of a limited partnership may authorize or ratify, after full disclosure of all material facts, a specific act or transaction by a general partner that otherwise would violate the duty of loyalty.

(g) It is a defense to a claim under subdivision (b)(2) and any comparable

claim in equity or at common law that the transaction was fair to the limited partnership.

(h) If, as permitted by subsection (f) or the partnership agreement, a general partner enters into a transaction with the limited partnership that would otherwise be prohibited by subdivision (b)(2), the general partner's rights and obligations arising from the transaction are the same as those of a person that is not a general partner.

History.
Acts 2017, ch. 440, § 1.

PART 5

CONTRIBUTIONS AND DISTRIBUTIONS

61-3-501. Form of contribution and acceptance.

(a) A contribution may consist of property transferred to, services performed for, or another benefit provided to the limited partnership or an agreement to transfer property to, perform services for, or provide another benefit to the partnership.

(b) Neither a purported contribution nor an offer of consideration to make a contribution must be treated as a contribution to a limited partnership until:

(1) The contribution is accepted by the affirmative vote or consent of all general partners; and

(2) The amount and value of the contribution are recorded in the required information of the limited partnership.

History.
Acts 2017, ch. 440, § 1.

61-3-502. Liability for contribution.

(a) A person's obligation to make a contribution to a limited partnership is not excused by the person's death, disability, termination, or other inability to perform personally.

(b) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited partnership to contribute money equal to the value, as stated in the required information, of the part of the contribution that has not been made. The foregoing option is in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited partnership may have against the partner under the partnership agreement or applicable law.

(c) A conditional obligation of a partner to make a contribution or return money or other property to a limited partnership shall not be enforced unless the conditions to the obligation have been satisfied or waived as to or by the partner. Conditional obligations include contributions payable upon a discretionary call of a limited partnership or a general partner prior to the time the call occurs.

(d) The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the partners. If a creditor of a

limited partnership extends credit or otherwise acts in reliance on an obligation described in subsection (a) without knowledge or notice of a compromise under this subsection (d), the creditor may enforce the obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a partner to make a contribution.

(e) A partnership agreement may provide that the interest of any partner who fails to make any contribution that the partner is obligated to make is subject to specified penalties for, or specified consequences of, the failure. The penalty or consequence may take the form of:

(1) Reducing or eliminating the defaulting partner's proportionate interest in the limited partnership;

(2) Subordinating the defaulting partner's partnership interest to that of nondefaulting partners;

(3) A forced sale of the defaulting partner's partnership interest;

(4) Forfeiture of the defaulting partner's partnership interest;

(5) The lending by other partners of the amount necessary to meet the defaulting partner's commitment;

(6) A fixing of the value of the defaulting partner's partnership interest by appraisal or by formula and redemption or sale of the defaulting partner's partnership interest at such value; or

(7) Other penalty or consequence.

History.
Acts 2017, ch. 440, § 1.

61-3-503 Sharing of and right to distributions before dissolution.

(a) Any distribution made by a limited partnership before its dissolution and winding up must be shared among the partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner, except to the extent necessary to comply with a transfer effective under § 61-3-702 or charging order in effect under § 61-3-703.

(b) A person has a right to a distribution before the dissolution and winding up of a limited partnership only if the partnership decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) A person does not have a right to demand or receive a distribution from a limited partnership in any form other than money. Except as otherwise provided in § 61-3-810(f), a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the partnership's obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as a partner on whose account the distribution is made.

History.
Acts 2017, ch. 440, § 1.

61-3-504. Limitations on distributions.

(a) A limited partnership may not make a distribution, including a distribution under § 61-3-810, if after the distribution:

(1) The partnership would not be able to pay its debts as they become due in the ordinary course of the partnership's activities and affairs; or

(2) The partnership's total assets would be less than the sum of its total liabilities, other than liabilities for which the recourse of creditors is limited to specified property, plus the amount that would be needed, if the partnership were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of partners and transferees whose preferential rights are superior to the rights of persons receiving the distribution; provided, however, that the value of property that is subject to a liability for which the recourse of creditors is limited must be included in the total assets of the partnership, only to the extent the value of the property exceeds the liability.

(b) A limited partnership may base a determination that a distribution is not prohibited under subsection (a) on:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) A fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (e), the effect of a distribution under subsection (a) is measured:

(1) In the case of a distribution that consists of a redemption or other purchase by the limited partnership of a transferrable interest, or of a transfer to a partner in return for relinquishment of any of that person's rights as a partner, as of the earlier of:

(A) The date money or other property is transferred or debt is incurred by the limited partnership; or

(B) The date the person entitled to the distribution ceases to own the interest or right being acquired by the partnership in return for the distribution;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of the date:

(A) The distribution is authorized, if the payment occurs not later than one hundred twenty (120) days after that date; or

(B) The payment is made, if the payment occurs more than one hundred twenty (120) days after the distribution is authorized.

(d) A limited partnership's indebtedness to a partner or transferee incurred by reason of a distribution made in accordance with this section is at parity with the partnership's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(e) A limited partnership's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) if the terms of the

indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(f) In measuring the effect of a distribution under § 61-3-810, the liabilities of a dissolved limited partnership do not include any claim that has been disposed of under § 61-3-806, § 61-3-807, or § 61-3-808.

History.
Acts 2017, ch. 440, § 1.

61-3-505. Liability for improper distributions.

(a) If a general partner consents to a distribution made in violation of § 61-3-504 and in consenting to the distribution fails to comply with § 61-3-409, the general partner is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation of § 61-3-504.

(b) A person that receives a distribution knowing that the distribution violated § 61-3-504 is personally liable to the limited partnership but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under § 61-3-504.

(c) A general partner against which an action is commenced because the general partner is liable under subsection (a) may:

(1) Implead any other person that is liable under subsection (a) and seek to enforce a right of contribution from the person; and

(2) Implead any person that received a distribution in violation of subsection (b) and seek to enforce a right of contribution from the person in the amount the person received in violation of subsection (b).

(d) An action under this section is barred unless commenced not later than two (2) years after the distribution.

History.
Acts 2017, ch. 440, § 1.

PART 6
DISSOCIATION

61-3-601. Dissociation as limited partner.

(a) A person does not have a right to dissociate as a limited partner before the completion of the winding up of the limited partnership.

(b) A person is dissociated as a limited partner when:

(1) The limited partnership knows or has notice of the person's express will to withdraw as a limited partner, but, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on that later date;

(2) An event stated in the partnership agreement as causing the person's dissociation as a limited partner occurs;

(3) The person is expelled as a limited partner pursuant to the partnership agreement;

(4) The person is expelled as a limited partner by the affirmative vote or consent of all the other partners if:

(A) It is unlawful to carry on the limited partnership's activities and affairs with the person as a limited partner;

(B) There has been a transfer of all the person's transferable interest in the limited partnership, other than:

(i) A transfer for security purposes; or

(ii) A charging order in effect under § 61-3-703;

(C) The person is an entity and:

(i) The limited partnership notifies the person that the person will be expelled as a limited partner because the person has filed a statement of dissolution or the equivalent, the person has been administratively dissolved, the person's charter or the equivalent has been revoked, or the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(ii) Not later than ninety (90) days after the notification, the statement of dissolution or the equivalent has not been withdrawn, rescinded, or revoked, the person has not been reinstated, or the person's charter or the equivalent or right to conduct business has not been reinstated; or

(D) The person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up;

(5) On application by the limited partnership or a partner in a direct action under § 61-3-901, the person is expelled as a limited partner by judicial order because the person:

(A) Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited partnership's activities and affairs;

(B) Has committed willfully or persistently, or is committing willfully and persistently, a material breach of the partnership agreement or the contractual obligation of good faith and fair dealing under § 61-3-305(a); or

(C) Has engaged or is engaging in conduct relating to the limited partnership's activities and affairs that makes it not reasonably practicable to carry on the activities and affairs with the person as a limited partner;

(6) In the case of an individual, the individual dies;

(7) In the case of a person that is a testamentary or inter vivos trust or is acting as a limited partner by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited partnership is distributed;

(8) In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed;

(9) In the case of a person that is not an individual, the existence of the person terminates;

(10) The limited partnership participates in a merger under part 11 of this

chapter; and

(A) The partnership is not the surviving entity; or

(B) Otherwise as a result of the merger, the person ceases to be a limited partner;

(11) The limited partnership participates in a conversion under part 11 of this chapter; or

(12) The limited partnership dissolves and completes winding up.

History.
Acts 2017, ch. 440, § 1.

61-3-602. Effect of dissociation as limited partner.

(a) If a person is dissociated as a limited partner:

(1) Subject to § 61-3-704, the person does not have further rights as a limited partner;

(2) The person's contractual obligation of good faith and fair dealing as a limited partner under § 61-3-305(a) ends with regard to matters arising and events occurring after the person's dissociation; and

(3) Subject to § 61-3-704 and part 11 of this chapter, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person solely as a transferee.

(b) A person's dissociation as a limited partner does not of itself discharge the person from any debt, obligation, or other liability to the limited partnership or the other partners which the person incurred while a limited partner.

History.
Acts 2017, ch. 440, § 1.

61-3-603. Dissociation as general partner.

A person is dissociated as a general partner when:

(1) The limited partnership knows or has notice of the person's express will to withdraw as a general partner, but, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on that later date;

(2) An event stated in the partnership agreement as causing the person's dissociation as a general partner occurs;

(3) The person is expelled as a general partner pursuant to the partnership agreement;

(4) The person is expelled as a general partner by the affirmative vote or consent of all the other partners if:

(A) It is unlawful to carry on the limited partnership's activities and affairs with the person as a general partner;

(B) There has been a transfer of all the person's transferable interest in the partnership, other than:

(i) A transfer for security purposes; or

(ii) A charging order in effect under § 61-3-703;

(C) The person is an entity and:

(i) The partnership notifies the person that the person will be

expelled as a general partner because the person has filed a statement of dissolution or the equivalent, the person has been administratively dissolved, the person's charter or the equivalent has been revoked, or the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(ii) Not later than ninety (90) days after the notification, the statement of dissolution or the equivalent has not been withdrawn, rescinded, or revoked, the person has not been reinstated, or the person's charter or the equivalent or right to conduct business has not been reinstated; or

(D) The person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up;

(5) On application by the limited partnership or a partner in a direct action under § 61-3-901, the person is expelled as a general partner by judicial order because the person:

(A) Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited partnership's activities and affairs;

(B) Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or a duty or obligation under § 61-3-409; or

(C) Has engaged or is engaging in conduct relating to the limited partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs of the limited partnership with the person as a general partner;

(6) In the case of an individual:

(A) The individual dies;

(B) A guardian or general conservator for the individual is appointed; or

(C) A court orders that the individual has otherwise become incapable of performing the individual's duties as a general partner under this chapter or the partnership agreement;

(7) The person:

(A) Becomes a debtor in bankruptcy;

(B) Executes an assignment for the benefit of creditors; or

(C) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

(8) In the case of a person that is a testamentary or inter vivos trust or is acting as a general partner by virtue of being a trustee of the trust, the trust's entire transferable interest in the limited partnership is distributed;

(9) In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed;

(10) In the case of a person that is not an individual, the existence of the person terminates;

(11) The limited partnership participates in a merger under part 11 of this chapter; and

(A) The partnership is not the surviving entity; or

(B) Otherwise as a result of the merger, the person ceases to be a general partner;

(12) The limited partnership participates in a conversion under part 11 of this chapter; or

(13) The limited partnership dissolves and completes winding up.

History.
Acts 2017, ch. 440, § 1.

61-3-604. Power to dissociate as general partner — Wrongful dissociation.

(a) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by withdrawing as a general partner by express will under § 61-3-603(1).

(b) A person's dissociation as a general partner is wrongful only if the dissociation:

(1) Is in breach of an express provision of the partnership agreement; or

(2) Occurs before the completion of the winding up of the limited partnership, and:

(A) The person withdraws as a general partner by express will;

(B) The person is expelled as a general partner by judicial order under § 61-3-603(5);

(C) The person is dissociated as a general partner under § 61-3-603(7); or

(D) In the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a general partner because the person willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to § 61-3-901, to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the general partner to the partnership or the other partners.

History.
Acts 2017, ch. 440, § 1.

61-3-605. Effect of dissociation as general partner.

(a) If a person is dissociated as a general partner:

(1) The person's right to participate as a general partner in the management and conduct of the limited partnership's activities and affairs terminates;

(2) The person's duties and obligations as a general partner under § 61-3-409 end with regard to matters arising and events occurring after the person's dissociation;

(3) The person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated as a general

partner; and

(4) Subject to § 61-3-704 and part 11 of this chapter, any transferable interest owned by the person in the person's capacity as a general partner immediately before dissociation is owned by the person solely as a transferee.

(b) A person's dissociation as a general partner does not, of itself, discharge the person from any debt, obligation, or other liability to the limited partnership or the other partners that the person incurred while a general partner.

History.
Acts 2017, ch. 440, § 1.

61-3-606. Power to bind and liability of person dissociated as general partner.

(a) After a person is dissociated as a general partner and before the limited partnership is merged out of existence or converted under part 11 of this chapter, or dissolved, the partnership is bound by an act of the person only if:

(1) The act would have bound the partnership under § 61-3-402 before the dissociation; and

(2) At the time the other party enters into the transaction:

(A) Less than one (1) year has passed since the dissociation; and

(B) The other party does not know or have notice of the dissociation and reasonably believes that the person is a general partner.

(b) If a limited partnership is bound under subsection (a), the person dissociated as a general partner that caused the partnership to be bound is liable:

(1) To the partnership for any damage caused to the partnership arising from the obligation incurred under subsection (a); and

(2) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

History.
Acts 2017, ch. 440, § 1.

61-3-607. Liability of person dissociated as general partner to other person.

(a) A person's dissociation as a general partner does not, of itself, discharge the person's liability as a general partner for a debt, obligation, or other liability of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (b) and (c), the person is not liable for a partnership obligation incurred after dissociation.

(b) A person whose dissociation as a general partner results in a dissolution and winding up of the limited partnership's activities and affairs is liable on an obligation incurred by the partnership under § 61-3-805 to the same extent as a general partner under § 61-3-404.

(c) A person that is dissociated as a general partner without the dissociation

resulting in a dissolution and winding up of the limited partnership's activities and affairs is liable on a transaction entered into by the limited partnership after the dissociation only if:

(1) A general partner would be liable on the transaction; and

(2) At the time the other party enters into the transaction:

(A) Less than one (1) year has passed since the dissociation; and

(B) The other party does not have knowledge or notice of the dissociation and reasonably believes that the person is a general partner.

(d) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for a debt, obligation, or other liability of the partnership.

(e) A person dissociated as a general partner is released from liability for a debt, obligation, or other liability of the limited partnership if the partnership's creditor, with knowledge or notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the debt, obligation, or other liability.

History.
Acts 2017, ch. 440, § 1.

PART 7

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

61-3-701. Nature of transferable interest.

A transferable interest is personal property.

History.
Acts 2017, ch. 440, § 1.

61-3-702. Transfer of transferable interest.

(a) A transfer, in whole or in part, of a transferable interest:

(1) Is permissible;

(2) Does not, by itself, cause a person's dissociation as a partner or a dissolution and winding up of the limited partnership's activities and affairs; and

(3) Subject to § 61-3-704, does not entitle the transferee to:

(A) Participate in the management or conduct of the limited partnership's activities and affairs; or

(B) Except as otherwise provided in subsection (c), have access to required information, records, or other information concerning the limited partnership's activities and affairs.

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) In a dissolution and winding up of a limited partnership, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.

(d) A transferable interest may be evidenced by a certificate of the interest

issued by a limited partnership in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) A limited partnership need not give effect to a transferee's rights under this section until the partnership knows or has notice of the transfer.

(f) A transfer of a transferable interest in violation of a restriction on transfer contained in the partnership agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

(g) Except as otherwise provided in §§ 61-3-601(b)(4)(B) and 61-3-603(4)(B), if a general or limited partner transfers a transferable interest, the transferor retains the rights of a general or limited partner other than the transferable interest transferred and retains all the duties and obligations of a general or limited partner.

(h) If a general or limited partner transfers a transferable interest to a person that becomes a general or limited partner with respect to the transferred interest, the transferee is liable for the transferor's obligations under §§ 61-3-502 and 61-3-505 known to the transferee when the transferee becomes a partner.

History.
Acts 2017, ch. 440, § 1.

61-3-703. Charging order.

(a) On application by a judgment creditor of a partner or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:

(1) Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) Make all other orders necessary to give effect to the charging order.

(c) The partner or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(d) This chapter does not deprive any partner or transferee of the benefit of any exemption law applicable to the transferable interest of the partner or transferee.

(e) This section provides the exclusive remedy by which a person, other than the partnership itself, seeking in the capacity of a judgment creditor to enforce a judgment against a partner or transferee may satisfy the judgment from the judgment debtor's transferable interest.

History.
Acts 2017, ch. 440, § 1.

61-3-704. Power of legal representative of deceased partner.

If a partner dies, the deceased partner's legal representative may exercise:

(1) The rights of a transferee provided in § 61-3-702(c); and

(2) For the purposes of settling the estate, the rights of a current limited partner under § 61-3-304.

History.
Acts 2017, ch. 440, § 1.

PART 8

DISSOLUTION

61-3-801. Events causing dissolution.

(a) A limited partnership is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

(1) An event or circumstance that the partnership agreement states causes dissolution;

(2) The affirmative vote or consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective;

(3) After the dissociation of a person as a general partner:

(A) If the limited partnership has at least one (1) remaining general partner, by partners owning a majority of the rights to receive distributions as partners at the time the vote or consent is to be effective; or

(B) If the limited partnership does not have a remaining general partner, the passage of ninety (90) days after the dissociation, unless before the end of the period:

(i) Consent to continue the limited partnership's activities and affairs and admit at least one (1) general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(ii) At least one (1) person is admitted as a general partner in accordance with the consent;

(4) The passage of ninety (90) consecutive days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the personal representative of the last remaining limited partner and all of the general partners agree, in writing or by vote, to continue the business of the limited partnership and to the admission of the personal representative of the limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner. However, a partnership agreement may provide that the general partners or the personal representative of the last remaining limited partner is obligated to agree in writing to continue the business of the limited partnership and to the administration of the personal representative of the limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the

last limited partner to cease to be a limited partner;

(5) The passage of ninety (90) consecutive days during which the partnership has only one (1) partner, unless before the end of the period:

(A) The last remaining partner admits at least one (1) person as a partner;

(B) If the previously sole remaining partner is only a general partner, the sole remaining general partner admits at least one (1) person as a limited partner; and

(C) If the previously sole remaining partner is only a limited partner, the sole remaining limited partner admits at least one (1) person as a general partner;

(6) On application by a partner, the entry by the appropriate court of an order dissolving the partnership on the grounds that:

(A) The conduct of all or substantially all of the limited partnership's activities and affairs is unlawful; or

(B) It is not reasonably practicable to carry on the limited partnership's activities and affairs in conformity with the certificate of limited partnership and partnership agreement; or

(7) The signing and filing of a statement of administrative dissolution by the secretary of state under § 61-3-811.

(b) If an event occurs that imposes a deadline on a limited partnership under subsection (a) and before the limited partnership has met the requirements of the deadline, another event occurs that imposes a different deadline on the partnership under subsection (a):

(1) The occurrence of the second event does not affect the deadline caused by the first event; and

(2) The limited partnership's meeting of the requirements of the first deadline does not extend the second deadline.

History.
Acts 2017, ch. 440, § 1.

61-3-802. Winding Up.

(a) A dissolved limited partnership shall wind up its activities and affairs and, except as otherwise provided in § 61-3-803, the partnership continues after dissolution only for the purpose of winding up.

(b) In winding up its activities and affairs:

(1) The limited partnership shall:

(A) Deliver to the secretary of state for filing a statement of dissolution; and

(B) Deliver to the secretary of state for filing a statement of termination stating:

(i) The name of the limited partnership;

(ii) A statement that the limited partnership's debts, obligations, and other liabilities are discharged;

(iii) A statement that the limited partnership's activities and affairs are settled and closed;

(iv) A statement that the limited partnership's assets are distributed;

and

(v) A statement that the limited partnership is terminated;

(2) The limited partnership may:

(A) Preserve the limited partnership's activities, affairs, and property as a going concern for a reasonable time;

(B) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(C) Transfer the limited partnership's property;

(D) Settle disputes by mediation or arbitration; and

(E) Perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities and affairs may be appointed by the affirmative vote or consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective. A person appointed under this subsection (c):

(1) Has the powers of a general partner under § 61-3-804 but is not liable for the debts, obligations, and other liabilities of the limited partnership solely by reason of having or exercising those powers or otherwise acting to wind up the dissolved limited partnership's activities and affairs; and

(2) Shall promptly deliver to the secretary of state for filing an amendment to the limited partnership's certificate of limited partnership stating:

(A) That the limited partnership does not have a general partner;

(B) The name and street address, including the zip code, of the person appointed, and a mailing address such as a post office box if the United States postal service does not deliver mail to the street address of the person; and

(C) That the person has been appointed pursuant to this subsection (c) to wind up the limited partnership.

(d) On the application of a partner, the appropriate court may order judicial supervision of the winding up of a dissolved limited partnership, including the appointment of a person to wind up the limited partnership's activities and affairs, if:

(1) The limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (c); or

(2) The applicant establishes other good cause.

History.

Acts 2017, ch. 440, § 1; 2018, ch. 575, § 9.

Amendments.

The 2018 amendment rewrote (b) which read: "(b) In winding up its activities and affairs, the limited partnership:

"(1) Shall discharge the limited partnership's debts, obligations, and other liabilities, settle and close the limited partnership's activities and affairs, and marshal and distribute the assets of the limited partnership; and

"(2) May:

"(A) Amend its certificate of limited partnership to state that the partnership is dissolved;

"(B) Preserve the limited partnership's activities, affairs, and property as a going concern for a reasonable time;

"(C) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

"(D) Transfer the limited partnership's property;

"(E) Settle disputes by mediation or arbitration;

"(F) Deliver to the secretary of state for filing

a statement of termination stating the name of the limited partnership and that the limited partnership is terminated; and

"(G) Perform other acts necessary or appropriate to the winding up."

Effective Dates.

Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-803. Rescinding dissolution.

(a) A limited partnership may rescind its dissolution, unless a statement of termination applicable to the partnership has become effective, the court of record has entered an order under § 61-3-801(a)(6) dissolving the partnership, or the secretary of state has dissolved the partnership under § 61-3-811.

(b) Rescinding dissolution under this section requires:

(1) The affirmative vote or consent of each partner; and

(2) If the limited partnership has delivered to the secretary of state for filing an amendment to the certificate of limited partnership stating that the limited partnership is dissolved and:

(A) The amendment has not become effective, delivery to the secretary of state for filing of a statement of withdrawal applicable to the amendment; or

(B) The amendment has become effective, delivery to the secretary of state for filing of an amendment to the certificate of limited partnership stating that dissolution has been rescinded under this section.

(c) If a limited partnership rescinds its dissolution:

(1) The limited partnership resumes carrying on the limited partnership's activities and affairs as if dissolution had never occurred;

(2) Subject to subdivision (c)(3), any liability incurred by the limited partnership after the dissolution and before the rescission has become effective is determined as if dissolution had never occurred; and

(3) The rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission shall not be adversely affected.

History.

Acts 2017, ch. 440, § 1.

61-3-804. Power to bind partnership after dissolution.

(a) A limited partnership is bound by a general partner's act after dissolution that:

(1) Is appropriate for winding up the limited partnership's activities and affairs; or

(2) Would have bound the partnership under § 61-3-402 before dissolution if, at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.

(b) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(1) At the time the other party enters into the transaction:

(A) Less than one (1) year has passed since the dissociation; and

(B) The other party does not know or have notice of the dissociation and reasonably believes that the person is a general partner; and

(2) The act:

(A) Is appropriate for winding up the limited partnership's activities and affairs; or

(B) Would have bound the limited partnership under § 61-3-402 before dissolution and at the time the other party enters into the transaction the other party does not know or have notice of the dissolution.

History.
Acts 2017, ch. 440, § 1.

61-3-805. Liability after dissolution of general partner and person dissociated as general partner.

(a) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under § 61-3-804(a) by an act that is not appropriate for winding up the limited partnership's activities and affairs, the general partner is liable:

(1) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(2) If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(b) If a person dissociated as a general partner causes a limited partnership to incur an obligation under § 61-3-804(b), the person is liable:

(1) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(2) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the obligation.

History.
Acts 2017, ch. 440, § 1.

61-3-806. Known claims against dissolved limited partnership.

(a) A dissolved limited partnership may give notice of a known claim under subsection (b), which has the effect provided in subsection (c).

(b) The dissolved limited partnership shall notify the limited partnership's known claimants in writing of the dissolution at any time after the dissolution's effective date. The written notice must:

(1) Describe information that must be included in a claim;

(2) State whether the claim is admitted, or not admitted, and if admitted:

(A) The amount that is admitted, which may be as of a given date; and

(B) Any interest obligation if fixed by an instrument of indebtedness;

(3) Provide a mailing address, including zip code, where a claim may be sent;

(4) State the deadline, which may not be fewer than four (4) months from the effective date of the written notice, by which the dissolved limited partnership must receive the claim; and

(5) State that, except to the extent that any claim is admitted, the claim is barred if written notice of the claim is not received by the deadline.

(c) A claim against the dissolved limited partnership is barred to the extent that it is not admitted:

(1) If the dissolved limited partnership delivered written notice to the claimant in accordance with subsection (b) and the claimant does not deliver a written notice of the claim to the dissolved limited partnership by the deadline; or

(2) If the dissolved limited partnership delivered written notice to the claimant that the claimant's claim is rejected, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within three (3) months from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

(e) For purposes of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five (5) days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(4) Twenty (20) days after its deposit in the United States mail, as evidenced by the postmark if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

History.
Acts 2017, ch. 440, § 1.

61-3-807. Other claims against dissolved limited partnership.

(a) A dissolved limited partnership may publish notice of the limited partnership's dissolution and request persons having claims against the partnership to present them in accordance with the notice.

(b) A notice under subsection (a) must:

(1) Be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited partnership's principal office is located or, if the principal office is not located in this state, in the county in which the office of the partnership's registered agent is or was last located;

(2) Describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address, including zip code, to which the claim is to be sent;

(3) State that a claim against the partnership is barred unless an action to enforce the claim is commenced not later than two (2) years after publication of the notice; and

(4) Unless the partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership also bars any corresponding claim against any general

partner or person dissociated as a general partner that is based on § 61-3-404.

(c) If a dissolved limited partnership publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the partnership not later than two (2) years after the publication date of the notice:

(1) A claimant that did not receive notice in a record under § 61-3-806;

(2) A claimant whose claim was timely sent to the limited partnership but not acted on; and

(3) A claimant whose claim is contingent at, or based on an event occurring after, the date of dissolution.

(d) A claim not barred under this section or § 61-3-806 may be enforced:

(1) Against the dissolved limited partnership, to the extent of the limited partnership's undistributed assets;

(2) Except as otherwise provided in § 61-3-808, if assets of the limited partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the limited partnership's assets distributed to the partner or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subdivision (d)(2) must not exceed the total amount of assets distributed to the person after dissolution; and

(3) Against any person liable on the claim under §§ 61-3-404 and 61-3-607.

History.
Acts 2017, ch. 440, § 1.

61-3-808. Court proceedings.

(a) A dissolved limited partnership that has published a notice under § 61-3-807 may file an application with the chancery court in the county where the limited partnership's principal office is located or, if the principal office is not located in this state, where the office of the limited partnership's registered agent is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the limited partnership, or are based on an event occurring after the date of dissolution but which, based on the facts known to the limited partnership, are reasonably expected to arise after the date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under § 61-3-807.

(b) Not later than ten (10) days after the filing of an application under subsection (a), the dissolved limited partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the limited partnership.

(c) In a proceeding brought under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited partnership.

(d) A dissolved limited partnership that provides security in the amount and form ordered by the court under subsection (a) satisfies the limited partner-

ship's obligations with respect to claims that are contingent, have not been made known to the limited partnership, or are based on an event occurring after the date of dissolution, and such claims must not be enforced against a partner or transferee on account of assets received in liquidation.

History.
Acts 2017, ch. 440, § 1.

61-3-809. Liability of general partner and person dissociated as general partner when claim against limited partnership barred.

If a claim against a dissolved limited partnership is barred under § 61-3-806, § 61-3-807, or § 61-3-808, any corresponding claim under § 61-3-404 or § 61-3-607 is also barred.

History.
Acts 2017, ch. 440, § 1.

61-3-810. Disposition of assets in winding up — When contributions required.

(a) In winding up its activities and affairs, a limited partnership shall apply the limited partnership's assets, including the contributions required by this section, to discharge the limited partnership's obligations to creditors, including partners that are creditors.

(b) After a limited partnership complies with subsection (a), any surplus must be distributed in the following order, subject to any charging order in effect under § 61-3-703:

(1) To each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) Among persons owning transferable interests in proportion to their respective rights to share in distributions immediately before the dissolution of the limited partnership.

(c) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (a), with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following applies:

(1) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under § 61-3-607 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of a general partner in effect for each of those persons when the obligation was incurred;

(2) If a person does not contribute the full amount required under subdivision (c)(1) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by subdivision (c)(1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those

other persons is in proportion to the right to receive distributions in the capacity of a general partner in effect for each of those other persons when the obligation was incurred; and

(3) If a person does not make the additional contribution required by subdivision (c)(2), further additional contributions are determined and due in the same manner as provided in subdivision (c)(2).

(d) A person that makes an additional contribution under subdivision (c)(2) or (3) may recover from any person whose failure to contribute under subdivision (c)(1) or (2) necessitated the additional contribution. A person shall not recover under this subsection (d) more than the amount additionally contributed. A person's liability under this subsection (d) must not exceed the amount the person failed to contribute.

(e) If a limited partnership does not have sufficient surplus to comply with subdivision (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(f) All distributions made under subsections (b) and (c) must be paid in money.

History.
Acts 2017, ch. 440, § 1.

61-3-811. Administrative dissolution.

(a) The secretary of state may commence a proceeding under subsection (b) to dissolve a limited partnership administratively if:

(1) The limited partnership fails to pay any fee, tax, interest, or penalty required to be paid to the secretary of state;

(2) The limited partnership fails to deliver an annual report to the secretary of state not later than two (2) months after the report is due;

(3) The limited partnership is without a registered agent or registered office in this state for two (2) months or more;

(4) The limited partnership does not notify the secretary of state within two (2) months that the limited partnership's registered agent or registered office has been changed, that the limited partnership's registered agent has resigned, or that the limited partnership's registered office has been discontinued;

(5) The limited partnership submits to the secretary of state a check, bank draft, money order, or other such instrument, for payment of any fee and the instrument is dishonored upon presentation for payment;

(6) A general or limited partner or other representative of a limited partnership signed a document the person knew was false in any material respect, with the intent that the document be filed with the secretary of state; or

(7) The name of the limited partnership in any document filed under this chapter fails to comply with § 61-3-112.

(b) If the secretary of state determines that one (1) or more grounds exist for administratively dissolving a limited partnership, the secretary of state must serve the partnership with notice in a record of the secretary of state's determination. The record may be sent by first class mail.

(c) If a limited partnership, not later than two (2) months after service of the notice under subsection (b), does not cure or demonstrate to the satisfaction of the secretary of state the nonexistence of each ground determined by the secretary of state, the secretary of state must administratively dissolve the partnership by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The secretary of state shall file the statement and serve a copy on the partnership pursuant to § 61-3-119, except that the statement of administrative dissolution may be sent by first class mail.

(d) A limited partnership that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up the limited partnership's activities and affairs and liquidate its assets under §§ 61-3-802, 61-3-806, 61-3-807, 61-3-808, and 61-3-810, or to apply for reinstatement under § 61-3-812.

(e) The administrative dissolution of a limited partnership does not terminate the authority of the limited partnership's registered agent.

History.
Acts 2017, ch. 440, § 1.

61-3-812. Reinstatement.

(a) A limited partnership that is administratively dissolved under § 61-3-811 may apply to the secretary of state for reinstatement following the administrative dissolution. The application must:

(1) Be accompanied by a confirmation of good standing with the department of revenue relative to the limited partnership;

(2) State the name of the limited partnership at the time of the limited partnership's administrative dissolution;

(3) State a name for the limited partnership that satisfies § 61-3-112; and

(4) State that the grounds for dissolution did not exist or have been eliminated.

(b) If the secretary of state determines that the application is accompanied by the confirmation of good standing with the department of revenue and contains the information required by subsection (a), and that the information is correct, then the secretary of state must cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited partnership. Service of the copy may be by first class mail.

(c) If the limited partnership name in subdivision (a)(2) is different than the limited partnership name in subdivision (a)(3), the application for reinstatement must constitute an amendment to the certificate of limited partnership insofar as it pertains to the limited partnership's name.

(d) When reinstatement is effective, reinstatement relates back to and takes effect as of the effective date of the administrative dissolution, and the limited partnership resumes carrying on the limited partnership's business as if the administrative dissolution had never occurred.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, §§ 10, 11.

Amendments.
The 2018 amendment inserted "with the department of revenue" following "good standing" in (a)(1) and (b).

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-813. Judicial review of denial of reinstatement.

(a) If the secretary of state denies a limited partnership's application for reinstatement following administrative dissolution, the secretary of state must serve the limited partnership with a notice in a record that explains the reasons for the denial.

(b) A limited partnership may seek judicial review of a denial of reinstatement in the chancery court of Davidson County not later than thirty (30) days after service of the notice of denial.

History.
Acts 2017, ch. 440, § 1.

61-3-814. Statement of termination following administrative dissolution.

(a) When a limited partnership has been administratively dissolved and wishes to terminate its existence, it may do so without first being reinstated by delivering a statement of termination to the secretary of state for filing following administrative dissolution, stating the name of the limited partnership and that the limited partnership is terminated.

(b) The secretary of state shall file the statement of termination following administrative dissolution if the secretary of state finds that the statement of termination complies with subsection (a) and the limited partnership is in good standing with the department of revenue.

History.
Acts 2018, ch. 575, § 12.

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-815. Statement of termination.

(a) When a limited partnership has been dissolved and wishes to terminate its existence, it may do so by delivering a statement of termination to the secretary of state for filing and include the information described in § 61-3-802(b)(1)(B) and the secretary of state control number.

(b) The secretary of state shall file the statement of termination if the secretary of state finds that the statement of termination complies with subsection (a) and the limited partnership is in good standing with the department of revenue.

History.
Acts 2018, ch. 575, § 12.

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

PART 9

ACTIONS BY PARTNERS

61-3-901. Direct action by partner.

(a) Subject to subsection (b), a partner may maintain a direct action against another partner or the limited partnership, with or without an accounting as to the limited partnership's activities and affairs, to enforce the partner's rights and otherwise protect the partner's interests, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(b) A partner maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(c) A right to an accounting on a dissolution and winding up does not revive a claim barred by law.

History.
Acts 2017, ch. 440, § 1.

61-3-902. Derivative action.

A partner may maintain a derivative action to enforce a right of a limited partnership if:

(1) The partner first makes a demand on the general partners, requesting that the general partners cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or

(2) A demand under subdivision (1) would be futile.

History.
Acts 2017, ch. 440, § 1.

61-3-903. Proper plaintiff.

A derivative action to enforce a right of a limited partnership may be maintained only by a person that:

(1) Is a partner at the time the action is commenced; and

(2) Either:

(A) Was a partner when the conduct giving rise to the action occurred; or

(B) Whose status as a partner devolved on the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

History.
Acts 2017, ch. 440, § 1.

61-3-904. Pleading.

In a derivative action, the complaint must state with particularity:

(1) The date and content of plaintiff's demand and the response to the demand by the general partner; or

(2) Why demand should be excused as futile.

History.
Acts 2017, ch. 440, § 1.

61-3-905. Special litigation committee.

(a) If a limited partnership is named as or made a party in a derivative proceeding, the partnership may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited partnership. If the limited partnership appoints a special litigation committee, on motion by the committee made in the name of the limited partnership, except for good cause shown, the court must stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection (a) does not prevent the court from:

(1) Enforcing a person's right to information under § 61-3-304 or § 61-3-407; or

(2) Granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee must be composed of one (1) or more disinterested and independent individuals, who may be partners.

(c) A special litigation committee may be appointed:

(1) By a majority of the general partners not named as parties in the proceeding; or

(2) If all general partners are named as parties in the proceeding, by a majority of the general partners named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited partnership that the proceeding:

(1) Continue under the control of the plaintiff;

(2) Continue under the control of the committee;

(3) Be settled on terms approved by the committee; or

(4) Be dismissed.

(e) After making a determination under subsection (d), a special litigation committee shall file with the court a statement of the committee's determination and report supporting the committee's determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made the committee's recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court must enforce the committee's determination. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) and allow the action to continue under the control of the plaintiff.

History.
Acts 2017, ch. 440, § 1.

61-3-906. Proceeds and expenses.

(a) Except as otherwise provided in subsection (b):

(1) Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the plaintiff; and

(2) If the plaintiff receives any proceeds, the plaintiff must remit the proceeds immediately to the limited partnership.

(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited partnership.

(c) A derivative action on behalf of a limited partnership must not be voluntarily dismissed or settled without the court's approval.

History.
Acts 2017, ch. 440, § 1.

PART 10

FOREIGN LIMITED PARTNERSHIPS

61-3-1001. Governing law.

(a) Subject to the Constitution of Tennessee:

(1) The law of the jurisdiction of formation of a foreign limited partnership governs:

(A) The organization and internal affairs of the foreign limited partnership;

(B) The liability of a partner as partner for a debt, obligation, or other liability of the foreign limited partnership; and

(C) The liability of a series of the foreign limited partnership;

(2) A foreign limited partnership is not precluded from registering to do business in this state because of any difference between the law of the foreign limited partnership's jurisdiction of formation and the law of this state.

(b) Registration of a foreign limited partnership to do business in this state does not authorize the foreign partnership to engage in any activities and affairs or exercise any power that a limited partnership may not engage in or exercise in this state.

History.
Acts 2017, ch. 440, § 1.

61-3-1002. Registration to do business in this state.

(a) A foreign limited partnership shall not do business in this state until the foreign limited partnership registers with the secretary of state under this part.

(b) A foreign limited partnership doing business in this state shall not

maintain an action or proceeding in this state unless the foreign limited partnership is registered to do business in this state and has paid to this state all fees for the years or parts thereof during which the foreign limited partnership did business in this state without having registered.

(c) The failure of a foreign limited partnership to register to do business in this state does not impair the validity of a contract or act of the foreign limited partnership or preclude the foreign limited partnership from defending an action or proceeding in this state.

(d) A limitation on the liability of a general partner or limited partner of a foreign limited partnership is not waived solely because the foreign limited partnership does business in this state without registering to do business in this state.

(e) Section 61-3-1001(a) and (b) applies even if the foreign limited partnership fails to register under this part.

(f) Any foreign limited partnership doing business in this state without first having registered shall be fined and shall pay to the secretary of state three (3) times the otherwise required filing fees for each year or part thereof during which the foreign limited partnership failed to register in this state.

History.
Acts 2017, ch. 440, § 1.

61-3-1003. Registration.

(a) To register to do business in this state, a foreign limited partnership must submit to the secretary of state:

(1) An original copy executed by a general partner of an application for registration as a foreign limited partnership, setting forth:

(A) The name of the foreign limited partnership and, if different, the name under which the foreign limited partnership proposes to register and do business in this state;

(B) The jurisdiction where organized, the date of the foreign limited partnership's organization and a statement from a general partner that, as of the date of filing, the foreign limited partnership validly exists as a limited partnership under the laws of the jurisdiction of the foreign limited partnership's organization;

(C) The street address and zip code of the foreign limited partnership's registered office in this state, and a mailing address such as a post office box if the United States postal service does not deliver to the principal office; the county in which that office is located; and the name of the foreign limited partnership's registered agent at that office;

(D) The street address, including the zip code, of the foreign limited partnership's principal office, and a mailing address such as a post office box if the United States postal service does not deliver to the principal office;

(E) The name and business, residence or mailing address and zip code of each of the general partners; and

(F) The date on which the foreign limited partnership first did, or intends to do, business in this state;

(2) With the completed application, a certificate of existence, or a docu-

ment of similar import, duly authenticated by the secretary of state or other official having custody of limited partnership records in the jurisdiction under whose law it is formed. The certificate must not bear a date of more than two (2) months prior to the date the application is filed in this state; and

(3) A fee as set forth in § 61-3-1205.

(b) If the secretary of state determines upon registration that a foreign limited partnership has been doing business in this state for a period of one (1) year or more prior to applying for registration, then the secretary of state must not file the registration until the foreign limited partnership submits a letter of good standing from the department of revenue.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, § 13.

Amendments.
The 2018 amendment substituted "letter of good standing from the department of revenue" for "confirmation of good standing" at the end of (b).

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-1004. Amendment of foreign registration.

(a) If any statement required by § 61-3-1003 in the application for registration of a foreign limited partnership was false when made or any matter described in the application for registration has changed, making the application false, the foreign limited partnership must promptly file with the secretary of state an application for an amended registration of a foreign limited partnership. Notwithstanding the preceding sentence, a change in the foreign limited partnership's registered agent or registered office can be made by filing a statement of change as provided in § 61-3-116. Nothing in this chapter requires an amended registration if the only change in the certificate of foreign limited partnership is related to the admission or substitution of limited partners.

(b) The requirements of § 61-3-1003 for obtaining an original registration of a foreign limited partnership apply to obtaining an amended registration under this section.

History.
Acts 2017, ch. 440, § 1.

61-3-1005. Activities not constituting doing business.

(a) Activities of a foreign limited partnership that do not constitute doing business in this state under this part include:

(1) Maintaining, defending, or settling any proceeding, claim, or dispute;

(2) Holding meetings of the foreign limited partnership's partners or representatives, or carrying on any other activities concerning the foreign limited partnership's internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited partnership's own securities, or appointing and maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through representatives or otherwise, if the orders require acceptance outside of this state before the orders become contracts;

(7) Creating or acquiring indebtedness, deeds of trust, mortgages, and security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages, deeds of trust, and security interests in property securing the debts;

(9) Owning, without more, real or personal property. However, for a reasonable time, the management and rental of real property acquired in connection with enforcing a mortgage or deed of trust is also not considered transacting business, if the owner is attempting to liquidate the investment, and if no office or other agency for the office, other than an independent agency, is maintained in this state;

(10) Conducting an isolated transaction that is completed within one (1) month and that is not a transaction in the course of repeated transactions of a like nature; or

(11) Transacting business in interstate commerce.

(b) A person does not do business in this state solely by being a partner of a foreign limited partnership that does business in this state.

(c) The enumeration of activities in subsections (a) and (b) is not exhaustive, and is applicable solely to determine whether a foreign limited partnership is required to register and for no other purpose. This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under the law of this state other than this chapter.

History.
Acts 2017, ch. 440, § 1.

61-3-1006. Noncomplying name of foreign limited partnership.

(a) A foreign limited partnership whose name does not comply with § 61-3-112 shall not register to do business in this state until the foreign limited partnership adopts, for the purpose of doing business in this state, an alternate name that complies with § 61-3-112. After registering to do business in this state with an alternate name, a foreign limited partnership shall do business in this state under:

(1) The alternate name; or

(2) The foreign limited partnership's name, with the addition of the foreign limited partnership's jurisdiction of formation.

(b) If a registered foreign limited partnership changes its name to one that does not comply with § 61-3-112, the foreign limited partnership must not do business in this state until it complies with subsection (a) by amending its registration to adopt an alternate name that complies with § 61-3-112.

History.
Acts 2017, ch. 440, § 1.

61-3-1007. Withdrawal deemed on conversion to domestic filing entity or domestic limited liability partnership.

A registered foreign limited partnership that converts to a domestic limited liability partnership or to a domestic entity whose formation requires delivery of a record to the secretary of state for filing is deemed to have withdrawn its registration on the effective date of the conversion.

History.
Acts 2017, ch. 440, § 1.

61-3-1008. Transfer of registration.

(a) When a registered foreign limited partnership has merged into a foreign entity that is not registered to do business in this state or has converted to a foreign entity required to register with the secretary of state to do business in this state, the foreign entity shall deliver to the secretary of state for filing an application for transfer of registration. The application must state:

(1) The name of the registered foreign limited partnership before the merger or conversion;

(2) That, before the merger or conversion, the registration pertained to a foreign limited partnership;

(3) The name of the applicant foreign entity into which the foreign limited partnership has merged or to which it has been converted and, if the name does not comply with § 61-3-112, an alternate name adopted pursuant to § 61-3-1006(a);

(4) The type of entity of the applicant foreign entity, its jurisdiction of formation, the date of its formation, its duration (if other than perpetual), and the date its fiscal year closes;

(5) The street addresses, including zip code, of the principal office of the applicant foreign entity and if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street address of that office;

(6) The name and street address, including zip code, of the applicant foreign entity's registered agent in this state;

(7) If the United States postal service does not deliver mail to any of the street addresses listed in the application, a mailing address, including zip code, to which mail may be delivered;

(8) The date the applicant foreign entity commenced doing business in this state;

(9) If the applicant foreign entity is a limited liability company:

(A) Whether it is manager managed, member managed, director managed, or board managed;

(B) If it has more than six (6) members at the date of the filing of the application, the number of members of the limited liability company at the date of the filing of the application; and

(C) If § 48-249-309(i) is applicable to the foreign limited liability company, the information required by § 48-249-309(i);

(10) If the applicant foreign entity is a corporation:

(A) The name and address, including city, state, and zip code, of each of its current officers;

(B) The name and address, including city, state, and zip code, of each of its current directors;

(C) A statement that it is (or is not, as the case may be) a corporation for profit; and

(D) Any additional designation, such as bank, captive insurance company, credit union, for-profit benefit corporation, insurance company, litigation financier, Massachusetts trust, professional corporation, or trust company;

(11) If the applicant foreign entity is a limited partnership, the name and address, including city, state, and zip code, of each of its current general partners; and

(12) If the application is not to become effective immediately upon filing, the date (not later than ninety (90) days after the date of filing) and time the application is to become effective.

(b) The applicant foreign entity shall deliver with the completed application a certificate of existence, or document of similar import, duly authenticated by the secretary of state or other official having custody of business entity records in the jurisdiction of the applicant foreign entity's formation. The certificate shall not bear a date more than two (2) months prior to the date the application is filed in this state.

(c) If the applicant foreign entity is a limited liability company that elects to be registered as an obligated member entity pursuant to § 48-217-101(f), the application must:

(1) State that the limited liability company elects to be registered as an obligated member entity;

(2) State the effective date of this registration;

(3) State that the signer understands that this election will cause the members of the limited liability company to become liable for the debts, obligations, and liabilities of the limited liability company to the same extent as a partner of a general partnership; and

(4) Be accompanied by an obligated member addendum in the form prescribed by the secretary of state and signed by each person or entity that is a member of the limited liability company at the date of the filing of the application.

(d) If the secretary of state determines upon application that the applicant foreign entity has been transacting business in this state without a certificate of authority for a period of one (1) year or more, then the secretary of state shall not file the application until the applicant foreign entity submits a letter of good standing from the department of revenue.

(e) When an application for transfer of registration takes effect, the registration of the foreign limited partnership to do business in this state is transferred without interruption to the foreign entity into which the partnership has merged or to which it has been converted.

History.

Acts 2017, ch. 440, § 1; 2018, ch. 575, §§ 14-18.

Amendments.

The 2018 amendment substituted "shall deliver" for "must deliver" in the first sentence of

the introductory paragraph of (a); rewrote (a)(4), which read "The type of entity of the applicant foreign entity and the foreign entity's jurisdiction of formation"; added (a)(8)–(a)(12); redesignated former (b) as present (e); and added present (b)–(d).

Effective Dates.

Acts 2018, ch. 575, § 42, March 16, 2018.

61-3-1009. Revocation of registration.

(a) The secretary of state may commence a proceeding under subsection (b) to administratively revoke the registration of a registered foreign limited partnership authorized to transact business in this state, if:

(1) The foreign limited partnership does not deliver its annual report to the secretary of state within two (2) months after the report is due;

(2) The foreign limited partnership is without a registered agent or registered office in this state for two (2) months or more;

(3) The foreign limited partnership does not inform the secretary of state, under § 61-3-116 or § 61-3-117, that the foreign limited partnership's registered agent or registered office has changed, that the foreign limited partnership's registered agent has resigned, or that the foreign limited partnership's registered office has been discontinued, within two (2) months of the change, resignation, or discontinuance;

(4) The name of the foreign limited partnership contained in a document filed pursuant to this chapter fails to comply with § 61-3-1006;

(5) A general partner or representative of the foreign limited partnership signed a document the person knew was false in any material respect, with the intent that the document be delivered to the secretary of state for filing;

(6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of the foreign limited partnership's records in the jurisdiction under the laws of which the foreign limited partnership is formed, stating that the foreign limited partnership has been terminated, or has been a constituent party to a merger and was not the surviving entity of the merger;

(7) The foreign limited partnership is exceeding the authority conferred upon it by this part; or

(8) The foreign limited partnership submits to the secretary of state a check, bank draft, money order, or other instrument for payment of any fee, and the instrument is dishonored upon presentation for payment.

(b)(1) If the secretary of state determines that one (1) or more grounds exist under subsection (a) for revocation of a registration, the secretary of state must serve the foreign limited partnership with written communication of the secretary of state's determination, except that the determination may be sent by first class mail. If the grounds for revocation are pursuant to subdivision (a)(6), notice need not be sent, and a certificate of revocation may be sent without the two-month waiting period required by subdivision (b)(2).

(2) If the foreign limited partnership does not correct each ground for administrative revocation, or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist, within two (2) months after service of the communication of the determination, the secretary of state may revoke the foreign limited

partnership's registration by signing a certificate of revocation that recites the ground or grounds for revocation and the revocation's effective date. The secretary of state shall file the original of the certificate and shall serve a copy on the foreign limited partnership, except that the copy of the certificate may be sent by first class mail.

(3) The authority of a foreign limited partnership to transact business in this state ceases on the date shown on the certificate revoking the foreign limited partnership's registration.

(4) The secretary of state's revocation of a foreign limited partnership's registration appoints the secretary of state as the foreign limited partnership's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign limited partnership was authorized to transact business in this state. Service of process on the secretary of state under this subdivision (b)(4) is service on the foreign limited partnership.

(5) The administrative revocation of a foreign limited partnership's registration does not terminate the designation or authority of the registered agent or registered office of the limited partnership.

History.
Acts 2017, ch. 440, § 1.

61-3-1010. Reinstatement of foreign limited partnership.

(a) If the registration of a foreign limited partnership is administratively revoked pursuant to § 61-3-1009, the partnership may apply to the secretary of state for reinstatement following the administrative revocation. The application must:

(1) [Deleted by 2018 amendment.]

(2) State the name of the foreign limited partnership at the time of the revocation of the foreign limited partnership's registration;

(3) State a name for the limited partnership that satisfies § 61-3-112; and

(4) State that the grounds for revocation of the foreign limited partnership's registration did not exist or have been eliminated.

(b) If the secretary of state determines that the application is accompanied by a confirmation of good standing with the department of revenue and contains the information required by subsection (a), and that the information is correct, then the secretary of state must cancel the certificate of revocation and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign limited partnership. Service of the copy may be made by first class mail.

(c) If the foreign limited partnership name in subdivision (a)(2) is different than the foreign limited partnership name in subdivision (a)(3), the application for reinstatement must constitute an amendment to the registration insofar as it pertains to the foreign limited partnership's name.

(d) When reinstatement is effective, reinstatement relates back to and takes effect as of the effective date of the administrative dissolution, and the foreign limited partnership resumes carrying on its business as if the administrative dissolution had never occurred.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, §§ 19, 20.

Amendments.
The 2018 amendment deleted former (a)(1) which read: "Be accompanied by a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of foreign limited partnership's records in the jurisdiction under whose law the foreign limited partnership is formed and bearing a date of no more than two (2) months prior to the date the application is filed in this state;" and substituted "confirmation of good standing with the department of revenue" for "the required certificate of existence or corresponding document" in the first sentence of (b).

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-1011. Judicial review of denial of reinstatement of foreign limited partnership.

(a) If the secretary of state denies a foreign limited partnership's application for reinstatement following revocation of its registration, the secretary of state must serve the foreign limited partnership with a notice in a record that explains the reasons for the denial.

(b) A foreign limited partnership may seek judicial review of a denial of reinstatement in the chancery court of Davidson County not later than thirty (30) days after service of the notice of denial.

History.
Acts 2017, ch. 440, § 1.

61-3-1012. Cancellation of registration.

(a) A registered foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation of registration accompanied by a confirmation of good standing with the department of revenue. The certificate of cancellation must state:

(1) The current name of the foreign limited partnership, and if different, the name under which it transacts business in this state;

(2) The name of the jurisdiction under the laws of which the foreign limited partnership is formed;

(3) That the foreign limited partnership is not doing business in this state and that it withdraws its registration to do business in this state;

(4) That foreign limited partnership either continues its registered agent in this state, or revokes the authority of its registered agent to accept service on its behalf in this state;

(5) A mailing address to which service of process may be made under subsection (b); and

(6) A commitment to notify the secretary of state in the future of any change in the mailing address set forth under subdivision (a)(5).

(b) After the withdrawal of the registration of a foreign limited partnership, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited partnership was registered to do business in this state may be made pursuant to § 61-3-119.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, § 21.

Amendments.
The 2018 amendment rewrote (a) which read:

"(a) A registered foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation of registration stating:

"(1) The name of the foreign limited partnership and its jurisdiction of formation;

"(2) That the foreign limited partnership is not doing business in this state and that it withdraws its registration to do business in this state;

"(3) That the foreign limited partnership revokes the authority of its registered agent to accept service on its behalf in this state; and

"(4) An address to which service of process may be made under subsection (b)."

Effective Dates.

Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-1013. Enjoining from doing business.

The attorney general and reporter may maintain an action by complaint in the chancery court of any county in which a foreign limited partnership is transacting any business in this state to enjoin a foreign limited partnership from doing business in this state in violation of this part.

History.

Acts 2017, ch. 440, § 1.

61-3-1014. Cancellation of registration following administrative revocation.

(a) When a foreign limited partnership that has had its registration revoked desires to cancel its registration it may do so without first being reinstated by filing with the secretary of state a certificate of cancellation of registration following administrative revocation of registration accompanied by a confirmation of good standing by the department of revenue. The certificate of cancellation of certificate of registration must set forth:

(1) The current name of the foreign limited partnership and, if different, the name under which the foreign limited partnership transacts business in this state; the date of revocation of foreign limited partnership registration; and the name of the jurisdiction under the laws of which the foreign limited partnership is formed;

(2) That the foreign limited partnership is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That the foreign limited partnership either continues its registered agent in this state, or revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subdivision (a)(3); and

(5) A commitment to notify the secretary of state in the future of any change in the mailing address set forth under subdivision (a)(4).

(b) After cancellation of the registration of the foreign limited partnership, service of process on the secretary of state or the continued registered agent under this section is service on the foreign limited partnership. Upon receipt of process, the secretary of state shall comply with § 61-3-121. However, the mailing address set forth under subdivision (a)(4), as it may be changed under subdivision (a)(5), shall be deemed to be the principal executive office of the

foreign limited partnership, for purposes of the compliance with § 61-3-121 by the secretary of state.

History.
Acts 2018, ch. 575, § 22.

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

PART 11

MERGER AND CONVERSION

61-3-1101. Definitions.

As used in this part:

(1) "Articles of conversion" means articles under § 61-3-1114;

(2) "Articles of merger" means articles under § 61-3-1108;

(3) "Conversion" means a transaction authorized by §§ 61-3-1110 – 61-3-1115;

(4) "Converted entity" means the converting entity as the converting entity continues in existence after a conversion;

(5) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to § 61-3-1112 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation;

(6) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity;

(7) "Domestic", with respect to an entity, means governed as to the entity's internal affairs by the law of this state;

(8) "Entity":

(A) Means:

(i) A business corporation;

(ii) A nonprofit corporation;

(iii) A general partnership, including a limited liability partnership;

(iv) A limited partnership, including a limited liability limited partnership;

(v) A limited liability company;

(vi) A general cooperative association;

(vii) A limited cooperative association;

(viii) An unincorporated nonprofit association;

(ix) A statutory trust, business trust, or common-law business trust; or

(x) Any other person that has:

(a) A legal existence separate from any interest holder of that person; or

(b) The power to acquire an interest in real property in its own name; and

(B) Does not include:

(i) An individual;

(ii) A trust with a predominantly donative purpose or a charitable trust;

(iii) An association or relationship that is not an entity listed in subdivision (6)(A) and is not a partnership under § 61-1-202 or a similar provision of the governing jurisdiction;

(iv) A decedent's estate; or

(v) A government or a governmental subdivision, agency, or instrumentality;

(9) "Filing entity":

(A) Means an entity whose formation requires the filing of a public organic record; and

(B) Does not include a limited liability partnership;

(10) "Foreign," with respect to an entity, means an entity governed as to the entity's internal affairs by the law of a jurisdiction other than this state;

(11) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(A) Receive or demand access to information concerning, or the books and records of, the entity;

(B) Vote for or consent to the election of the governors of the entity; or

(C) Receive notice of or vote on or consent to an issue involving the internal affairs of the entity;

(12) "Governor" means:

(A) A director of a business corporation;

(B) A director or trustee of a nonprofit corporation;

(C) A general partner of a general partnership;

(D) A general partner of a limited partnership;

(E) A manager of a manager-managed limited liability company;

(F) A member of a member-managed limited liability company;

(G) A director of a general cooperative association;

(H) A director of a limited cooperative association;

(I) A manager of an unincorporated nonprofit association;

(J) A trustee of a statutory trust, business trust, or common-law business trust; or

(K) Any other person under whose authority the powers of an entity are exercised and under whose direction the entity's activities and affairs are managed pursuant to the organic law and organic rules of the entity;

(13) "Interest" means:

(A) A share in a business corporation;

(B) A membership in a nonprofit corporation;

(C) A partnership interest in a general partnership;

(D) A partnership interest in a limited partnership;

(E) A membership interest in a limited liability company;

(F) A share in a general cooperative association;

(G) A member's interest in a limited cooperative association;

(H) A membership in an unincorporated nonprofit association;

(I) A beneficial interest in a statutory trust, business trust, or common-law business trust; or

(J) A governance interest or distributional interest in any other type of unincorporated entity;

(14) "Interest holder" means:

(A) A shareholder of a business corporation;

(B) A member of a nonprofit corporation;

(C) A general partner of a general partnership;

(D) A general partner of a limited partnership;

(E) A limited partner of a limited partnership;

(F) A member of a limited liability company;

(G) A shareholder of a general cooperative association;

(H) A member of a limited cooperative association;

(I) A member of an unincorporated nonprofit association;

(J) A beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or

(K) Any other direct holder of an interest;

(15) "Interest holder liability" means:

(A) Personal liability for a liability of an entity that is imposed on a person:

(i) Solely by reason of the status of the person as an interest holder; or

(ii) By the organic rules of the entity that make one (1) or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(B) An obligation of an interest holder under the organic rules of an entity to contribute to the entity;

(16) "Merger" means a transaction authorized by §§ 61-3-1104 – 61-3-1109;

(17) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective;

(18) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity;

(19) "Organic rules" means the public organic record and private organic rules of an entity;

(20) "Plan" means a plan of merger, plan of conversion, or plan of domestication;

(21) "Plan of conversion" means a plan under § 61-3-1111;

(22) "Plan of merger" means a plan under § 61-3-1105;

(23) "Private organic rules":

(A) Means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any; and

(B) Includes:

(i) The bylaws of a business corporation;

(ii) The bylaws of a nonprofit corporation;

(iii) The partnership agreement of a general partnership;

(iv) The partnership agreement of a limited partnership;

(v) The operating agreement of a limited liability company;

(vi) The bylaws of a general cooperative association;

(vii) The bylaws of a limited cooperative association;

(viii) The governing principles of an unincorporated nonprofit asso-

ciation; and

(ix) The trust instrument of a statutory trust or similar rules of a business trust or a common-law business trust;

(24) "Protected agreement" means:

(A) A record evidencing indebtedness and any related agreement in effect on the date the entity becomes subject to this chapter pursuant to § 61-3-1207;

(B) An agreement that is binding on an entity on the date the entity becomes subject to this chapter pursuant to § 61-3-1207;

(C) The organic rules of an entity in effect on the date the entity becomes subject to this chapter pursuant to § 61-3-1207; or

(D) An agreement that is binding on any of the governors or interest holders of an entity on the date the entity becomes subject to this chapter pursuant to § 61-3-1207;

(25) "Public organic record":

(A) Means the record the filing of which by the secretary of state is required to form an entity and any amendment to or restatement of that record; and

(B) Includes:

(i) The articles of incorporation of a business corporation;

(ii) The articles of incorporation of a nonprofit corporation;

(iii) The certificate of limited partnership of a limited partnership;

(iv) The articles of organization of a limited liability company;

(v) The articles of incorporation of a general cooperative association;

(vi) The articles of organization of a limited cooperative association; and

(vii) The certificate of trust of a statutory trust or similar record of a business trust;

(26) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a record filed by the secretary of state;

(27) "Surviving entity" means the entity that continues in existence after or is created by a merger; and

(28) "Type of entity" means a generic form of entity:

(A) Recognized at common law; or

(B) Formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

History.

Acts 2017, ch. 440, § 1; 2018, ch. 575, §§ 23, 24.

Amendments.

The 2018 amendment, in (a), substituted "articles of organization" for "certificate of organization" in (B)(iv) of the definition of "public organic record"; substituted the definition of "articles of conversion" for the definition of "statement of conversion"; and substituted the definition of "articles of merger" for the definition of "statement of merger".

Effective Dates.

Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-1102. Required notice or approval.

(a) A domestic entity that is required to give notice to, or obtain the approval

of, a governmental agency or officer of this state to be a party to a merger shall give the notice or obtain the approval to be a party to a conversion.

(b) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this part becomes effective must not, as a result of the transaction, be diverted from the objects for which the property was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the attorney general specifying the disposition of the property.

(c) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity.

(d) A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the surviving entity under this section.

History.
Acts 2017, ch. 440, § 1.

61-3-1103. Appraisal rights.

An interest holder of a domestic merging or converting limited partnership is entitled to contractual appraisal rights in connection with a transaction under this part only to the extent provided in:

(1) The partnership agreement; or

(2) The plan.

History.
Acts 2017, ch. 440, § 1.

61-3-1104. Merger Authorized.

(a) By complying with §§ 61-3-1105 – 61-3-1109:

(1) One (1) or more domestic limited partnerships may merge with one (1) or more domestic or foreign entities into a domestic or foreign surviving entity; and

(2) Two (2) or more foreign entities may merge into a domestic limited partnership.

(b) By complying with §§ 61-3-1104 – 61-3-1109 applicable to foreign entities, a foreign entity may be a party to a merger under §§ 61-3-1105 – 61-3-1109 or may be the surviving entity in the merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

History.
Acts 2017, ch. 440, § 1.

61-3-1105. Plan of merger.

(a) A domestic limited partnership may become a party to a merger under this section and §§ 61-3-1106 – 61-3-1109 by approving a plan of merger. The

plan must be in a record and contain:

(1) As to each merging entity, its name, jurisdiction of formation, and type of entity;

(2) If the surviving entity is to be created in the merger, a statement to that effect and the entity's name, jurisdiction of formation, and type of entity;

(3) The manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) If the surviving entity exists before the merger, any proposed amendments to:

(A) Its public organic record, if any; and

(B) Its private organic rules that are, or are proposed to be, in a record;

(5) If the surviving entity is to be created in the merger:

(A) Its proposed public organic record, if any; and

(B) The full text of its private organic rules that are proposed to be in a record;

(6) The other terms and conditions of the merger; and

(7) Any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.

(b) In addition to the requirements of subsection (a), a plan of merger may contain any other provision not prohibited by law.

History.
Acts 2017, ch. 440, § 1.

61-3-1106. Approval of merger.

(a) A plan of merger is not effective unless the plan has been approved:

(1) By a domestic merging limited partnership, the affirmative vote or consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective; and

(2) In a record, by each partner of a domestic merging limited partnership that will have interest holder liability for debts, obligations, and other liabilities that are incurred after the merger becomes effective, unless:

(A) The partnership agreement of the partnership provides in a record for the approval of a merger in which some or all of its partners become subject to interest holder liability by the affirmative vote or consent of fewer than all the partners; and

(B) The partner consented in a record to or voted for that provision of the partnership agreement or became a partner after the adoption of that provision.

(b) A merger involving a domestic merging entity that is not a limited partnership is not effective unless the merger is approved by that entity in accordance with the entity's organic law.

(c) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

History.
Acts 2017, ch. 440, § 1.

61-3-1107. Amendment or abandonment of plan of merger.

(a) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) A domestic merging limited partnership may approve an amendment of a plan of merger:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which the plan may be amended; or

(2) By its partners in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(B) The public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(c) After a plan of merger has been approved and before the articles of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited partnership may abandon the plan in the same manner as the plan was approved.

(d) If a plan of merger is abandoned after articles of merger have been delivered to the secretary of state for filing and before the articles become effective, a statement of abandonment, signed by a party to the plan, must be delivered to the secretary of state for filing before the articles of merger become effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(1) The name of each party to the plan of merger;

(2) The date on which the articles of merger were filed by the secretary of state; and

(3) A statement that the merger has been abandoned in accordance with this section.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, §§ 25, 26.

Amendments.
The 2018 amendment substituted "articles of merger" for "statement of merger" throughout (c) and (d); and made related changes.

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-1108. Articles of merger — Effective date of merger.

(a) Articles of merger must be signed by each merging entity and delivered to the secretary of state for filing.

(b) Articles of merger must contain:

(1) The name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;

(2) The name, jurisdiction of formation, and type of entity of the surviving entity;

(3) A statement that the merger was approved by each domestic merging entity, if any, in accordance with §§ 61-3-1104 – 61-3-1109 and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;

(4) If the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;

(5) If the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment; and

(6) If the surviving entity is created by the merger and is a domestic limited liability partnership, its application for registration, as an attachment.

(c) In addition to the requirements of subsection (b), articles of merger may contain any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the law of this state, except that the public organic record does not need to be signed.

(e) If the surviving entity is a domestic limited partnership, the merger becomes effective when the articles of merger are effective. In all cases, the merger becomes effective on the later of:

(1) The date and time provided by the organic law of the surviving entity; or

(2) When the articles are effective.

History.

Acts 2017, ch. 440, § 1; 2018, ch. 575, §§ 27, 28.

Amendments.

The 2018 amendment substituted "Articles of merger" for "A statement of merger" at the beginning of (a) and the introductory language of (b); substituted "articles of merger" for "a statement of merger" in (c); in the introductory paragraph of (e), substituted "the articles of merger are effective" for "the statement of merger is effective" at the end of the first sentence, and substituted "In all cases," for "In all other cases," at the beginning of the second sentence; substituted "or" for "and" at the end of (e)(1); and substituted "articles are effective" for "the statement is effective" at the end of (e)(2).

Effective Dates.

Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-1109. Effect of merger.

(a) When a merger becomes effective:

(1) The surviving entity continues or comes into existence;

(2) Each merging entity that is not the surviving entity ceases to exist;

(3) All property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;

(4) All debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;

(5) Except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(6) If the surviving entity exists before the merger:

(A) All of the surviving entity's property continues to be vested in it without transfer, reversion, or impairment;

(B) The surviving entity remains subject to all of its debts, obligations, and other liabilities; and

(C) All the surviving entity's rights, privileges, immunities, powers, and purposes continue to be vested in it;

(7) The name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(8) If the surviving entity exists before the merger:

(A) The surviving entity's public organic record, if any, is amended to the extent provided in the statement of merger; and

(B) The surviving entity's private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(9) If the surviving entity is created by the merger, its private organic rules become effective and:

(A) If the surviving entity is a filing entity, its public organic record becomes effective; and

(B) If the surviving entity is a limited liability partnership, its application for registration becomes effective; and

(10) The interests in each merging entity that are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under § 61-3-1103 and the merging entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the merging entity.

(c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that are incurred after the merger becomes effective.

(d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging limited partnership with respect to which the person had interest holder liability is subject to the following:

(1) The merger does not discharge any interest holder liability under this chapter to the extent the interest holder liability was incurred before the merger became effective;

(2) The person does not have interest holder liability under this chapter for any debt, obligation, or other liability that is incurred after the merger

becomes effective;

(3) This chapter continues to apply to the release, collection, or discharge of any interest holder liability preserved under subdivision (d)(1) as if the merger had not occurred; and

(4) The person has whatever rights of contribution from any other person as are provided by this chapter, law other than this chapter, or the partnership agreement of the domestic merging limited partnership with respect to any interest holder liability preserved under subdivision (d)(1) as if the merger had not occurred.

(e) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging limited partnership as provided in § 61-3-119.

(f) When a merger becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is cancelled.

History.
Acts 2017, ch. 440, § 1.

61-3-1110. Conversion authorized.

(a) By complying with §§ 61-3-1111 – 61-3-1115, a domestic limited partnership may become:

(1) A domestic entity that is a different type of entity; or

(2) A foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(b) By complying with the provisions of §§ 61-3-1111 – 61-3-1115 applicable to foreign entities, a foreign entity may become a domestic limited partnership if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic limited partnership but does not refer to a conversion, the provision applies to a conversion of the partnership as if the conversion were a merger until the provision is amended after the date the entity becomes subject to this chapter pursuant to § 61-3-1207.

History.
Acts 2017, ch. 440, § 1.

61-3-1111. Plan of conversion.

(a) A domestic limited partnership may convert to a different type of entity under this section and §§ 61-3-1112 – 61-3-1115 by approving a plan of conversion. The plan must be in a record and contain:

(1) The name of the converting limited partnership;

(2) The name, jurisdiction of formation, and type of entity of the converted entity;

(3) The manner of converting the interests in the converting limited partnership into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) The proposed public organic record of the converted entity if it will be

a filing entity;

(5) The private organic rules of the converted entity that are proposed to be in a record when the conversion is effective;

(6) Any other terms and conditions of the conversion not otherwise set forth in the private organic rules of the converting limited partnership or the law of this state; and

(7) Any other provision required by the law of this state or the partnership agreement of the converting limited partnership.

(b) In addition to the requirements of subsection (a), a plan of conversion may contain any other provision not prohibited by law.

History.
Acts 2017, ch. 440, § 1.

61-3-1112. Approval of conversion.

(a) A plan of conversion is not effective unless it has been approved:

(1) By a domestic converting limited partnership, the affirmative vote or consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective; and

(2) In a record, by each partner of a domestic converting limited partnership that will have interest holder liability for debts, obligations, and other liabilities that are incurred after the conversion becomes effective, unless:

(A) The partnership agreement of the partnership provides in a record for the approval of a conversion or a merger in which some or all of its partners become subject to interest holder liability by the affirmative vote or consent of fewer than all of the partners; and

(B) The partner voted for or consented in a record to that provision of the partnership agreement or became a partner after the adoption of that provision.

(b) A conversion involving a domestic converting entity that is not a limited partnership is not effective unless it is approved by the domestic converting entity in accordance with its organic law.

(c) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

History.
Acts 2017, ch. 440, § 1.

61-3-1113. Amendment or abandonment of plan of conversion.

(a) A plan of conversion of a domestic converting limited partnership may be amended:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) By its partners in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the converting partnership under the plan;

(B) The public organic record, if any, or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(b) After a plan of conversion has been approved by a domestic converting limited partnership and before articles of conversion become effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited partnership may abandon the plan in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after articles of conversion have been delivered to the secretary of state for filing and before the articles become effective, a statement of abandonment, signed by the converting entity, shall be delivered to the secretary of state for filing before the articles of conversion become effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) The name of the converting limited partnership;

(2) The date on which the articles of conversion were filed by the secretary of state; and

(3) A statement that the conversion has been abandoned in accordance with this section.

History.

Acts 2017, ch. 440, § 1; 2018, ch. 575, §§ 29, 30.

Amendments.

The 2018 amendment substituted "articles of conversion" for "a statement of conversion" throughout (b) and (c) and made related changes; and substituted "shall be delivered" for "must be delivered" in the first sentence of the introductory paragraph of (c).

Effective Dates.

Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-1114. Articles of conversion — Effective date of conversion.

(a) Articles of conversion must be signed by the converting entity and delivered to the secretary of state for filing.

(b) Articles of conversion must contain:

(1) The name, jurisdiction of formation, and type of entity of the converting entity;

(2) The name, jurisdiction of formation, and type of entity of the converted entity;

(3) If the converting entity is a domestic limited partnership, a statement that the plan of conversion was approved in accordance with §§ 61-3-1112 – 61-3-1115 or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign entity in accordance with the law of its jurisdiction of formation;

(4) If the converted entity is a domestic filing entity, its public organic record, as an attachment; and

(5) If the converted entity is a domestic limited liability partnership, its application for registration, as an attachment.

(c) In addition to the requirements of subsection (b), articles of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed.

(e) If the converted entity is a domestic limited partnership, the conversion becomes effective when articles of conversion are effective. In all other cases, the conversion becomes effective on the later of:

(1) The date and time provided by the organic law of the converted entity; and

(2) When the articles are effective.

History.

Acts 2017, ch. 440, § 1; 2018, ch. 575, §§ 31-33.

Amendments.

The 2018 amendment substituted "Articles of conversion" for "A statement of conversion" at the beginning of (a) and the introductory language of (b); substituted "articles of conversion" for "a statement of conversion" in (c); substituted "articles of conversion are effective" for "the statement of conversion is effective" at the end of the first sentence of the introductory paragraph of (e); and substituted "the articles are effective" for "the statement is effective" in (e)(2).

Effective Dates.

Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-1115. Effect of conversion.

(a) When a conversion becomes effective:

(1) The converted entity is:

(A) Organized under and subject to the organic law of the converted entity; and

(B) The same entity without interruption as the converting entity;

(2) All property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(3) All debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(4) Except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) The name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) The certificate of limited partnership of the converted entity becomes effective;

(7) The provisions of the partnership agreement of the converted entity that are to be in a record, if any, approved as part of the plan of conversion become effective; and

(8) The interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under § 61-3-1103.

(b) Except as otherwise provided in the partnership agreement of a domestic converting limited partnership, the conversion does not give rise to any rights that a partner or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that are incurred after the conversion becomes effective.

(d) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting limited partnership with respect to which the person had interest holder liability is subject to the following:

(1) The conversion does not discharge any interest holder liability under this chapter to the extent the interest holder liability was incurred before the conversion became effective;

(2) The person does not have interest holder liability under this chapter for any debt, obligation, or other liability that is incurred after the conversion becomes effective;

(3) This chapter continues to apply to the release, collection, or discharge of any interest holder liability preserved under subdivision (d)(1) as if the conversion had not occurred; and

(4) The person has whatever rights of contribution from any other person as are provided by this chapter, law other than this chapter or the organic rules of the converting entity with respect to any interest holder liability preserved under subdivision (d)(1) as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in § 61-3-119.

(f) If the converting entity is a registered foreign entity, its registration to do business in this state is cancelled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

History.
Acts 2017, ch. 440, § 1.

PART 12

MISCELLANEOUS PROVISIONS

61-3-1201. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. The rule that statutes in derogation of the common law are to be strictly construed does not apply to this chapter.

History.
Acts 2017, ch. 440, § 1.

61-3-1202. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.) but does not modify, limit, or supersede 15 U.S.C. § 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. § 7003(b).

History.
Acts 2017, ch. 440, § 1.

61-3-1203. Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before January 1, 2018.

History.
Acts 2017, ch. 440, § 1.

61-3-1204. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

History.
Acts 2017, ch. 440, § 1.

61-3-1205. Fees.

(a) The secretary of state shall collect the following fees when the documents described in this subsection (a) are delivered to the secretary of state for filing:

(1) Annual report for secretary of state — $20.00;

(2) Application for use of indistinguishable name — $20.00;

(3) Application for reservation of limited partnership name — $20.00;

(4) Notice of transfer of reserved name — $20.00;

(5) Notice of cancellation of reserved name — $20.00;

(6) Statement of change of registered agent/office (by domestic/foreign limited partnership) — $20.00;

(7) Statement of change of registered office of limited partnership (by agent) — $5.00 per limited partnership, but not less than $20.00;

(8) Statement of resignation of registered agent for limited partnership — $20.00;

(9) Certificate of limited partnership (including designation of initial registered office and agent) — $100;

(10) Amendment to the certificate of limited partnership — $20.00;

(11) Certificate of cancellation of limited partnership — $20.00;

(12) Restated certificate of limited partnership — $20.00;

(13) Amended and restated certificate of limited partnership — $20.00;

(14) Articles of merger of limited partnership — $100;

(15) Application for registration of foreign limited partnership (including designation of initial registered office and agent) — $600;

(16) Application for amended registration of foreign limited partnership — $20.00;

(17) Certificate of cancellation of registration of foreign limited partnership — $20.00;

(18) Certificate of correction — $20.00;

(19) Execution, amendment or cancellation of limited partnership by judicial order — No Fee;

(20) Application for certificate of existence or registration of limited partnership — $20.00;

(21) Application for reinstatement — $70.00;

(22) Statement of dissolution — $20.00;

(23) Statement of withdrawn or rescinded dissolution of limited partnership — $20.00; and

(24) Any other document required or permitted to be filed by this chapter — $20.00.

(b) The secretary of state shall collect a fee of twenty dollars ($20.00) each time process is served on the secretary of state under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The secretary of state shall collect a fee of twenty dollars ($20.00) for copying all filed documents relating to a domestic or foreign limited partnership. All copies must be certified or validated by the secretary of state.

History.
Acts 2017, ch. 440, § 1; 2018, ch. 575, §§ 34, 35.

Amendments.
The 2018 amendment substituted "Articles" for "Certificate" at the beginning of (a)(14); and rewrote (a)(23) which read: "Withdrawal statement — $25.00; and".

Effective Dates.
Acts 2018, ch. 575, § 42. March 16, 2018.

61-3-1206. Short title.

This chapter shall be known and may be cited as the "Tennessee Uniform Limited Partnership Act of 2017."

History.
Acts 2017, ch. 440, § 1.

61-3-1207. Applicability — Savings clause.

(a)(1) This chapter applies to:

(A) Every domestic limited partnership formed on or after January 1, 2018;

(B) Any domestic limited partnership that was formed prior to January 1, 2018, and that has elected to be governed by this chapter pursuant to subsection (b); and

(C) The outstanding and future interests in the respective domestic

limited partnerships described in subdivisions (a)(1)(A) and (B).

(2) If there are other specific statutory provisions that govern the formation of, impose restrictions or requirements on, confer special powers, privileges or authorities on or fix special procedures or methods for special categories of limited partnerships, then, to the extent those provisions are inconsistent with or different from this chapter, those provisions prevail.

(b)(1) On or after January 1, 2018, a domestic limited partnership formed prior to January 1, 2018, under the Tennessee Uniform Limited Partnership Act of 1988, compiled in chapter 2 of this title, may voluntarily elect to be governed by this chapter by amending its certificate of limited partnership to include the statement "This limited partnership elects to be governed by the Tennessee Uniform Limited Partnership Act of 2017," or a statement of like import. The election and amendment to the certificate of limited partnership is not effective unless it has been approved in a record by:

(A) All general partners; and

(B) The limited partners or, if there is more than one (1) class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

(2) Any partnership presently governed by the Tennessee Uniform Limited Partnership Act of 1988 that does not voluntarily elect to be governed by this chapter pursuant to subdivision (b)(1), continues to be governed by the Tennessee Uniform Limited Partnership Act of 1988.

(c)(1) Any limited partnership formed prior to January 1, 1988, that is presently governed by the limited partnership law in effect prior to January 1, 1988, may voluntarily elect to be governed by this chapter by filing a certificate of limited partnership pursuant to § 61-3-201. The certificate must include the statement "This limited partnership elects to be governed by the Tennessee Uniform Limited Partnership Act of 2017," or a statement of like import. This election and the filing of the certificate of limited partnership is not effective unless it has been approved in a record by:

(A) All general partners; and

(B) The limited partners or, if there is more than one (1) class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

(2) Any limited partnership that does not voluntarily elect to be governed by this chapter pursuant to subdivision (c)(1), shall continue to be governed by the law under which the limited partnership is presently governed, except that the limited partnership shall not have its term extended other than under this chapter.

(d)(1) This chapter applies to:

(A) Every foreign limited partnership that first registers to do business in this state on or after January 1, 2018;

(B) Every foreign limited partnership that registers a name in this state on or after January 1, 2018; and

(C) Every foreign limited partnership that has registered a name in this state prior to January 1, 2018, pursuant to the Tennessee Uniform Limited Partnership Act of 1988.

(2) With respect to each foreign limited partnership that first registered to do business in this state prior to January 1, 2018, the Tennessee Uniform Limited Partnership Act of 1988 applies to the foreign limited partnership until the due date of the first annual report required to be filed by the foreign limited partnership on or after January 1, 2018, after which due date this chapter applies to the foreign limited partnership, except that the foreign limited partnership is not required to again register to do business in this state.

(e) This chapter does not affect an action or proceeding commenced, or right accrued, under the Tennessee Uniform Limited Partnership Act of 1988.

History.
Acts 2017, ch. 440, § 1.

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